RECORDATION REQUESTED BY:

FOR RECORDATION, RETURN TO:
CARLSMITH, WICHMAN,
CASE, MUKAI AND ICHIKI
P.O. Box 656
Honolulu, Hawaii 96809
Phone: 523-2500

RETURN BY: MAIL ( ) PICKUP ( )

STATE OF HAWAII
OFFICE OF
BUREAU OF CONVEYANCES
Received for record this SEP 30 1987
day of ... A.D. 19...
at 2:49 o'clock P. M. and
recorded in Liber 21185
on Pages 173

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

1. Maui Land & Pineapple Company, Inc. submitted land in Kapalua, Maui, Hawaii, to the Declaration of Covenants and Restrictions dated December 29, 1976, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 11922 at Page 26, as supplemented from time to time, and as amended by that certain First Amendment of Declaration of Covenants and Restrictions dated August 14, 1985, recorded in the said Bureau in Liber 19005 at Page 629 (the "Declaration").

2. In accordance with Paragraph (b) of Section 1 of Article VI of the Declaration, the members of the Kapalua Resort Association reserved the right to amend the Declaration from time to time upon an affirmative vote of 66-2/3% of all Voting Rights of the Owners.

3. At a meeting of the Kapalua Resort Association duly called and held on September 25, 1987, (the "Meeting"), more than 66-2/3% of said Association's Voting Rights, in person and by proxy, voted to amend the Declaration by amending and restating the Declaration in its entirety as follows:

MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose post office address is P.O. Box 187, Kahului, Maui, Hawaii 96732 (the "Declarant") owns land in

Kapalua, Maui, Hawaii, shown on Exhibit A attached hereto and made a part hereof. A portion of the land is shown cross-hatched on Exhibit B attached hereto and made a part hereof (the "Submitted Land"). Declarant intends to develop or cause to be developed, the Submitted Land and additional adjacent real property, now owned (including the land shown on Exhibit A) or later acquired by Declarant, and from time to time annexed to the Submitted Land and made subject hereto (the "Annexation Property") with residences, apartments, hotels, roads, parks, recreational areas, open areas and a variety of uses by means of a planned community development, and to provide a variety of services within this community. The purpose of this Declaration is to create and keep the community desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to enhance the natural beauty of the community area; for all the mutual benefit and protection of owners within the community area. Initially, Declarant intends to develop or cause to be developed the Submitted Land reserving the right to impose these covenants and restrictions upon portions of the Annexation Property developed from time to time, to the end that the entire property may ultimately be developed, owned, used, managed, occupied and improved as a single community for the benefit of every part thereof and interest therein and the Owners of such parts and interests.

Declarant hereby declares that the Submitted Land and such portions of the Annexation Property as shall hereafter be annexed pursuant to the provisions hereof, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the Kapalua Protective Provisions, meaning the limitations, restrictions, covenants and conditions set forth in this

Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of such real property. These limitations, restrictions, covenants and conditions shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land.

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

(g) "Commercial Lot" shall mean any Lot within Kapalua zoned for hotel or other commercial purposes.

(h) "Committee" shall mean the Kapalua Design Committee established by the Declarant.

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

(j) "Condominium Unit" and "Apartment" shall mean a condominium apartment within a condominium project established within Kapalua pursuant to Chapter 514A, as amended, Hawaii Revised Statutes, and an apartment unit in a multi-unit planned development, planned unit development, cluster, or cooperative housing project, but excluding single-family detached residences.

(k) "Common Property" shall mean all real property in which the Association owns an interest for the common use and enjoyment of all Owners. Such interest may include, without limitation, estates in fee, estates for a term of years, or easements and shall also include any personal property acquired by the Association if said personal property is designated as "Common Property".

(l) "Declarant" shall mean Maui Land & Pineapple Company, Inc., and such other person or entity to the extent (i) it is designated Declarant by Maui Land & Pineapple Company, Inc. and (ii) it accepts the rights and obligations of Declarant hereunder, in a recorded document. "Declarant's Nominee" shall mean any division, subsidiary, or affiliate of Declarant or other person or entity (whether or not related to Declarant) nominated by Declarant to hold and exercise any of its rights hereunder, which nomination shall be in writing but need not be recorded.

(m) "Kapalua" shall include all land crosshatched in Exhibit B, together with such other land as may be annexed.

(n) "Kapalua Protective Provisions" shall mean the limitations, restrictions, covenants and conditions set forth in this Declaration.

(o) "Lot" shall mean any subdivided parcel shown as such upon a map filed in the Bureau of Conveyances of the State of Hawaii (excluding, however, a Condominium Unit).

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

(q) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the real property or real property improvements, referred to in Article III, Section 3 below, which give rise to voting rights and assessment responsibilities hereunder, with "Owner" to exclude mortgagees acting in such capacity; except that with respect to a Condominium Unit, the Grantee under a Condominium Conveyance Document (i.e., a document deeding the apartment in fee simple and leasing an undivided interest in the land) or the Lessee under an Apartment Lease (i.e., a document leasing both the apartment and the undivided interest in the land) shall be deemed the "Owner" of the Condominium Unit. Prior to the first conveyance or lease of any Lot by Declarant, "Owner" shall mean Declarant unless and to the extent Declarant has designated someone else to exercise the rights and bear the burdens of ownership.

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

(s) "Supplemental Declaration" shall include an amendment to this Declaration.

(t) "Voting Rights" shall mean the voting rights as defined in Section 3 of Article III hereof.

ARTICLE II

ANNEXATION

Section 1. Development Plan. Kapalua shall be developed pursuant to the appropriate County General Plan or Plans and by such zoning maps as may be approved by the County of Maui (collectively called the "Development Plan"). The development of Kapalua shall be in accordance with the Development Plan as amended from time to time according to the procedures established by the County of Maui, such amendments to include, but not be limited to, General Plan amendments, zoning changes, variances and conditional use permits and the term Development Plan as used herein shall include all such amendments.

Section 2. Annexation. The Declarant may, pursuant to the following provisions of this section, from time to time and in its sole discretion, annex to Kapalua any of the Annexation Property which has been or is being developed substantially in accordance with the Development Plan.

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

(b) Upon the annexation becoming effective, the property conveyed by such annexation shall become a part of

Kapalua, provided, however, that the property so annexed shall not be or become liable to assessments for the debts or obligations of the Association incurred prior to the date of annexation.

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

(d) No land, except that shown crosshatched on Exhibit B and except that specifically annexed as above provided shall be deemed subject to the Kapalua Protective Provisions, whether or not shown on any subdivision map filed by Declarant or described or referred to in any documents executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant (1) will commit or subject to the Kapalua Protective Provisions any land it may now own or hereafter acquire other than shown crosshatched on Exhibit B or (2) will develop any part or all of the land shown on Exhibit A and shown crosshatched on Exhibit B or any other land.

Section 3. Limitation on Annexation. Declarant's rights to annex such land shall expire with respect to any land not theretofore annexed for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of Senator Edward M. Kennedy of Massachusetts and former President Gerald R. Ford, whichever is later; and there shall be no further annexation thereafter without the affirmative vote of sixty-six and two-thirds percent (66-2/3%) of the Voting Rights.

ARTICLE III

KAPALUA RESORT ASSOCIATION

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

Section 2. Membership. Every Owner shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from the real property or real property improvement giving rise to the status of Owner. Rights to membership terminate upon termination of status as an Owner. Upon conveyance of an Owner's entire interest in his property, the conveying Owner shall be relieved of liability for assessments levied from and after the date of such conveyance. No Owner may avoid the obligations of membership during the period when he is an Owner by nonuse of the Common Property, renunciation or abandonment of his property, or any other act of abandonment or renunciation.

Section 3. Voting Rights. Voting Rights shall be determined as of January 1st of each year as follows:

(a) All Owners, including Declarant, shall receive Voting Rights entitling them to one (1) vote for every ten thousand (10,000) square feet of real property they own in fee simple (whether or not under lease) which is subject to the Kapalua Protective Provisions; and

(b) All other Voting Rights shall be determined in accordance with the following schedule:

1 vote for every Condominium Unit, for every apartment in an apartment house, and for every single-family residence on a Single Family Residential Lot (excluding guest houses and servants' quarters).

1 vote for each hotel guest room in a hotel.

1 vote for every 1,000 square feet of Floor Area in a building (other than floor area in a hotel, in a project included under the definition of Condominium Unit, in an apartment house, or in improvements on a Single Family Residential Lot) used for recreational, commercial, restaurant, convention or similar uses.

The Floor Area in buildings devoted to public utility purposes for the furnishing of gas, water, electricity, sewerage, or other utility services shall not be included in the computation of Voting Rights, nor shall Owners be entitled to any votes with respect to any Lot devoted primarily for such public utility purposes.

The voting rights of Owners of Condominium Units shall be exercised by the Board of Directors of the Association of Owners or Community Association, as the case may be, of the project in which the unit is located. If merchants or similar associations are established at Kapalua, the voting rights of the Owners of the Floor Area included in such associations shall be exercised through the board of directors of such associations.

For the purposes of this Section 3, the term "Floor Area" shall mean the actual number of gross square feet of floor space within the exterior face of the exterior walls of the building (except party and interior walls in which case the center thereof instead of the exterior face shall be used and except with respect to all entrances and exits as to which the exterior building line of the building shall be used). No deduction shall be made from "Floor Area" computed under the

foregoing definition by reason of columns, stairs, escalators, elevators, or other interior construction or equipment. But the term "Floor Area" shall not include basements, parking areas (whether or not covered), separate parking buildings, temporary buildings, golf cart sheds, and maintenance sheds. In a multiple-use situation, Voting Rights shall be applied to each use (unless excluded above)--for example, in the case of a Lot with both a single-family detached residence and a store having 5,000 square feet of Floor Area, the Owner of the residence would be entitled to one vote and the Owner of the store entitled to five votes.

(c) When more than one person owns an interest in a Lot, Condominium Unit, hotel guest room, or Floor Area having Voting Rights, the Voting Rights shall be exercised as the Owners thereof determine, but such Voting Rights shall be cast by only one person.

Section 4. Duties of Association. The Association shall have the obligations and duties, subject to the Kapalua Protective Provisions, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Kapalua:

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

(b) The Association shall accept title to all Common Property conveyed or leased on reasonable terms to it by Declarant or Declarant's Nominee.

(c) The Association shall maintain, repair, replace and landscape the Common Property and, at the discretion of the Board, the public beaches adjacent to Kapalua and such property dedicated to the County of Maui and immediately adjacent to Kapalua if the Board determines that such dedicated property is

not being maintained or landscaped in a manner comparable to the Common Property.

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

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

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

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

(2) A policy or policies insuring against any liability to the public or to the Owners, incident to the ownership and use of the Common Property and any other property or interest owned by the Association, and including the personal liability exposure of the Owners with respect to such property. Limits of liability under such insurance shall not be less than Five Hundred Thousand Dollars ($500,000) for any one person injured, One Million Dollars ($1,000,000) for any one accident, and One Hundred Thousand Dollars ($100,000) for property damage for each occurrence (such limits and coverage

to be reviewed at least annually by the Board and increased in its discretion). The above policy of liability insurance if and to the extent it can be obtained, shall cover as insureds the Declarant, the Association, the Board, the Committee, the Owners, and their agents, representatatatives, members, guests and employees. Each policy of insurance obtained by the Association shall expressly waive any and all rights of subrogation against Declarant, the Association, the Board, the Committee, the Owners, and their agents, officers, representatives, and employees.

Section 5. Powers and Authority of the Association Through Its Board. The Association through its Board of Directors shall have all the powers set forth in its Charter and Bylaws, together with its general powers, as a nonprofit corporation, and to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Kapalua Protective Provisions, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Board shall have the following powers:

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

Association through its Board shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of Kapalua Protective Provisions, or to enforce by mandatory injunction or otherwise all of the provisions of the Kapalua Protective Provisions.

(b) In fulfilling any of its duties under the Kapalua Protective Provisions, including its duties for the maintenance, repair, operation or administration of the Common Property, and to the extent necessary by the failure of the Owners of Lots or in exercising any of its rights to construct improvements or other work upon any Common Property, the Board shall have the following power and authority:

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

(2) To contract and pay for, or otherwise provide for, construction, maintenance, repair and landscaping Common Property on such terms and conditions as the Board shall deem appropriate;

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

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

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

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

(7) To pay and discharge any and all liens placed upon any Common Property on account of any work done or performed by the Board in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration; provided, however, that if any such materials, supplies, furniture, equipment, services and labor are provided for particular Lots or Condominium Units, the cost thereof shall be specially assessed to the Owners of such Lots or Condominium Units unless covered by insurance;

(8) To contract and pay for, or otherwise provide for beach maintenance, which shall include beach preservation and clean-up of beaches immediately adjacent to Kapalua and lifeguard service along such beaches; and

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

(10) To borrow money on such terms and conditions as the Board may deem desireable and to pledge or otherwise give such security for such loans as the Board may determine.

(c) The Board shall be required to grant and convey in fee, by lease or otherwise and with or without considera-

tion, to Declarant, Declarant's Nominees, and any third parties easements or rights-of-way in, on, over or under any Common Property without payment to the Association when required by Declarant or Declarant's Nominees; provided, however, that such easements or rights-of-way must be exercised in such manner as to not materially interfere with the use to which the Association has devoted such Common Property. The Board shall also have the right to dedicate or convey in fee, by lease or otherwise and with or without consideration, all or any part of its interest in the Common Property to any public entity or agency.

(d) The Board may from time to time employ the services of a manager to manage the affairs of the Association. The Board may delegate to the manager any of its powers under the Kapalua Protective Provisions; provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of $50,000; nor the power to sell, convey, mortgage or encumber any Common Property.

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

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

(g) Notwithstanding anything herein to the contrary, Section 5 of this Article III shall not apply to Lot A-4-A and Lot A-2 of the Kapalua Development Subdivision, and any improvements thereon; provided that future rules and regulations promulgated by the Board shall apply so long as such

rules and regulations are fair and equitable to the owner of such lots and/or the improvements thereon, would not constitute bad faith on the part of Declarant, its subsidiaries and/or the Association, and would not impose covenants, conditions and restrictions on the use, maintenance, alteration or occupancy of any of Lot A-4-A or Lot A-2 and any improvements thereon.

Section 6. Association Rules. The Board from time to time and subject to the provisions of the Kapalua Protective Provisions may adopt, amend and repeal rules and regulations to be known as the Association Rules governing, among other things:

(a) the use of the Common Property;

(b) the use of roads owned by the Association;

(c) the collection and disposal of refuse;

(d) the burning of open fires; and

(e) the maintenance of animals within Kapalua.

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

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

(2) The Board in its discretion shall recommend to the Owners a list of specific fines and penalties for the violation by any Owner of the provisions of the Kapalua Protective Provisions, the Association's Charter and Bylaws and the Association Rules. Upon the affirmative vote or written

consent of a majority of the Voting Rights of the Owners, such fines and penalties shall be binding on all Owners and shall be enforceable by the Board as a Special Assessment. Such a remedy shall not be deemed to be exclusive and the Board shall have such other remedies as are provided for by applicable law, the Kapalua Protective Provisions, the Association's Charter and Bylaws and the Association Rules.

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

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

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

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

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

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

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

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

(5) Notwithstanding anything herein to the contrary, Section 6 of this Article III shall not apply to Lot A-4-A and Lot A-2 of the Kapalua Development Subdivision, and any improvements thereon; provided that future rules and regulations promulgated by the Association shall apply so long as such rules and regulations are fair and equitable to the owner of such lots and/or the improvements thereon, would not constitute bad faith on the part of Declarant, it subsidiaries and/or the Association, and would not impose covenants, conditions and restrictions on the use, maintenance, alteration or occupancy of any of Lot A-4-A or Lot A-2 and any improvements thereon.

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

ARTICLE IV

ASSESSMENTS

Section 1. Responsibility. Each Owner of any Lot or Condominium Unit by acceptance of a purchase and sale agreement, deed, lease or other conveyance document therefor, whether or not it shall be so expressed in any such deed, lease

or any other conveyance, shall be deemed to covenant and agree to pay his proportionate share of general and special maintenance assessments and assessments for capital contributions, such assessments to be fixed, allocated and collected from time to time as provided herein.

Section 2. General Assessment. At least thirty (30) days prior to the commencement of each calendar year or the fiscal year as may from time to time be established by the Board, the Board shall prepare a budget for operation of the Common Property in accordance with generally accepted accounting practices used with respect to books of account maintained on a cash, accrual or modified cash basis. Such budget shall include the estimated normal costs of the Common Property for such fiscal year, which costs shall include those costs permitted by Section 3 below, and shall also include any estimated receipts for such fiscal year. The excess of the estimated normal costs over the estimated receipts (the "General Assessment Budget") shall be allocated among the Owners as follows:

(a) The Owners of hotels having hotel guest rooms and/or commercial Floor Areas (as defined in Article III, Section 3) shall be responsible for one-half (1/2) of the General Assessment Budget. The Owners of the hotels shall pay their share based on the number of hotel guest rooms and commercial Floor Areas in their respective hotels in allocating their share of the General Assessment Budget, or as they may otherwise agree.

(b) The Owners of Condominium Units, Residential House Lots, Commercial Lots, commercial Floor Areas and other Owners (except Owners of hotels referred to in this Section 2(a) above and Owners of Commercial Lots on which such hotels

are located) shall be responsible for the remaining one-half (1/2) of the General Assessment Budget. The Board shall allocate this share among such Owners in a fair and equitable manner in the Board's discretion; provided, however, that the portion allocated to the Owners of Condominiuim Units and Residential House Lots shall never exceed an amount measured by a fraction with the denominator being the then total Voting Rights of all Owners of the Association and the numerator being the then Voting Rights of the Owners of Condominium Units and Residential House Lots multiplied against the total General Assessment Budget.

(c) The intent of the allocation of the General Assessment Budget is to fairly share the burden of the general assessment among the Owners who utilize and benefit from the activities of the Association and the Common Property (sometimes referred to as the "proportionate share").

(d) Each Owner shall pay assessments so levied to the Association in equal quarterly or monthly installments or in such other reasonable manner as the Board shall designate.

(e) Any unexpended amounts at the end of any year shall be applied toward such normal costs in the following year.

Section 3. Purpose. The assessments levied by the Association shall be used exclusively for the purposes provided for in these Kapalua Protective Provisions.

Section 4. Supplemental General Assessments. If additional land shall be annexed to Kapalua during any fiscal year, the Association will prepare a supplemental budget which shall reflect the change of circumstances, and shall either levy a supplemental general assessment for increased normal costs of the Common Property, or shall provide a credit toward

future assessments. In addition, if the regular general assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Association may prepare a supplemental budget and levy a further general assessment for normal costs in the amount of such actual or estimated inadequacy.

Section 5. Special Assessment. In addition to the general assessments authorized above, and subject to the procedural requirements of Section 6 of Article III hereof, the Board shall also levy a special assessment against any Owner for monies expended by the Association in performing its functions under the Kapalua Protective Provisions which functions were directly or indirectly caused by such Owner's act or failure or refusal to act or otherwise comply with the Kapalua Protective Provisions, the Association Rules or the Committee Rules. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.

Section 6. Assessments for Capital Contributions. If the Association decides to purchase additional Common Property beyond that originally contributed, or to make capital additions or improvements to the Common Property, or to make other capital expenditures, so as to enhance the value of the Owners' property overall, the funds required for the specific capital addition shall be contributed to the capital of the Association by the Owners, in accordance with their proportionate shares, and specifically earmarked and segrated for the designated purpose.

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

transfer or conveyance, but no such sale, transfer or conveyance shall relieve such property, or the purchaser or transferee thereof with regard to assessments thereafter becoming due except as to any first mortgagee as provided above. Association liens may be foreclosed through suit in like manner as a mortgage of real property, and the Association shall have the power to bid on the property at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

Section 8. Exemption. The Common Property shall be exempt from assessment pursuant to the provisions of this Article IV.

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

Section 10. Collection from Subtenant. If the Owner shall at any time rent or lease his Lot, Condominium Unit or Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's proportionate share of maintenance assessments and special assessments, the Board may, at its option, so long as such default shall continue, demand

and receive from any renter or lessee (hereinafter in this paragraph referred to as "Lessee") of the Owner occupying the Lot or Apartment, the rent due or becoming due from such Lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, if any, and any such payment of such rent to the Board by the Lessee shall be sufficient discharge of such Lessee, as between such Lessee and the Owner to the extent of the amount so paid, but any such demand or acceptance of rent from any Lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the Lessee as aforesaid, the Lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

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

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

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

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

(c) By subordination agreement authorized by the Declarant and the Board, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

ARTICLE V

LAND USE RESTRICTIONS

Section 1. Land Use. The following provisions shall apply to the use of all property subject to the Kapalua Protective Provisions:

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

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

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

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

(4) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed

thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Lots or Condominium Units or the Common Property. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements located thereon, shall be placed or used upon any Lot without prior written approval of the Committee.

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

(6) No house pets or other animals shall be kept on any Lot or in any Apartment on a Multiple Family Residential Lot or in a Condominium Unit except where otherwise permitted by the Association Rules or a Supplemental Declaration.

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

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

(B) Such signs as Declarant or Declarant's Nominees may erect or maintain relating to sales, leasing, or other development activities within Kapalua,

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

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

(8) Except to the extent desired by Declarant or Declarant's Nominees to be used in connection with, and during, the development of Lots within Kapalua, no mobile home,

travel trailer, truck camper, house trailer or similar facility, or any boat, shall be placed upon any Lot except for storage purposes in strict accordance with Association rules in effect from time to time. Mobile homes shall be allowed on Lots, in strict accordance with Association Rules in effect from time to time, as a temporary facility during periods of construction of permanent structures on Lots. No stripped down, wrecked or junk motor vehicle shall be kept, parked, stored or maintained on any Lot. No commercial vehicle bearing commercial insignias or names shall be parked on any Lot except within an enclosed structure or a screened area which prevents such view thereof from adjoining Lots, roads and Common Property unless such vehicle is temporarily parked for the purpose of serving such Lot, or unless a Lot is specifically designated in a Supplemental Declaration as a parking area. The parking of vehicles on the roads shall at all times be subject to and in accordance with applicable laws, the provisions of this Declaration and further restrictions established by Supplemental Declarations or Association Rules.

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

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

(11) No outside clotheslines or other outside clothes drying or airing facilities shall be maintained upon any Lot.

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

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

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

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

(16) There shall be no water well on any Lot (except for those desired by Declarant or Declarant's Nominees)

unless (A) a permit has been obtained from the Board for the use of a water well thereon, and (B) the location and facilities used in connection with such well have been approved by the Board.

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

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

(19) No outside toilet, other than self contained portable toilet units used during construction, shall be constructed on any Lot. All plumbing fixtures, dishwashers, garbage disposals, toilets or sewage disposal systems shall be connected to a sewage system.

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

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

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

(23) No Owner of any Lot, except Declarant or Declarant's Nominees, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so has been granted by the Committee and then only subject to the limitations of such permit.

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

(25) No Single Family Residential Lot shall be resubdivided without Declarant's prior written consent.

(26) There shall be no blasting or discharge of explosives upon any Lot except as permitted by the Board and except that this provision shall in no way limit or restrict Declarant or Declarant's Nominees in their activities in connection with, and during, the sale, leasing, or other development of Lots within Kapalua.

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

(28) There shall be no exterior fires, except barbecue and incinerator fires contained within facilities or receptacles and in areas designated by the Board for such purpose. No Owner shall permit any condition which creates a

fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(29) There shall be no obstruction of the pedestrian walkways, tramways or roadways located upon any Lot for purposes of circulation of foot or vehicular traffic or any interference with free use thereof except such obstruction as may be reasonably required in connection with repairs of such walkways, tramways or roadways or in connection with construction. Use of all the walkways, tramways and roadways shall be subject to regulation by rules adopted by the Association and furnished in writing to the Owners. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of the walkways, roadways or tramways contrary to the provisions hereof and shall have a right of entry for purposes of removing the same, and any costs incurred by the Association in connection with such abatement, injunction or corrective work shall be specially assessed to the Owner or Owners responsible therefor. Free use of the walkways, roadways and tramways and free circulation of foot and vehicular traffic are essential elements of the Development Plan and the foregoing remedies are in addition to all other remedies the Association may have at law and in equity.

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

(b) Construction and Alteration of Improvements; Change in Topography; Approval of Plans; Community Design Committee.

The right of an Owner of a Lot (including collectively or individually the Owners of Condominium Units on a Lot) to construct, reconstruct, refinish, alter or maintain any improvement on his Lot, or to install any utility line (wire or conduit) thereon, or to make any excavation, or to cut or remove any trees from his Lot, or do any act which would affect the drainage thereof, shall (except for Declarant and Declarant's Nominees) be subject to all of the following:

(1) Any act mentioned in the previous paragraph of this Section 1(b) is absolutely prohibited unless and until the Owner of such Lot first obtains the approval thereof from the Committee, and otherwise complies with the following provisions of this paragraph. The Board shall have the right to remove any improvement constructed, reconstructed, refinished, altered or maintained in violation hereof and the Owner shall reimburse the Board for all expenses incurred in connection herewith.

(2) Any Owner proposing to do any of the things mentioned above shall apply to the Committee for approval as follows:

(A) The Owner shall submit to the Committee for approval such plans and specifications for the proposed work, including the following, as the Committee shall request:

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

the design and location of the sewage facilities to serve said Lot;

(ii) Floor plans;

(iii) Drawings showing all elevations of structures;

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

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

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

(vii) The Owner's proposed construction schedule.

The Committee may require that any such submission shall be accompanied by a reasonable inspection fee as determined from time to time by the Committee.

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

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

(i) The plans and specifications of the proposed structure, on the property, conforms to these Kapalua Protective Provisions; and

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

(iii) All setback requirements (if any) have been complied with; and

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

(D) Any application which has been neither approved or rejected within forty-five (45) days from the date of complete submission thereof to the Committee shall be deemed approved fifteen (15) days after the Committee receives notice from the Owner that he intends to proceed in accordance with the plans submitted unless the Committee acts within such fifteen (15) day period.

(3) Upon receipt of the approval from the Committee, the Owner shall, as soon as practical, proceed with the commencement, and completion, of the work contemplated by the application, pursuant to the approved plans and specifications. If the Owner shall fail to commence the work within one (1) year from the date of approval, the approval shall be deemed revoked unless upon the written request of the Owner made to the Committee prior to the expiration of said one (1) year period, and upon a finding by the Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Committee. In any event, the Owner shall complete the construction of the foundation and all

exterior surfaces (including the structure on his Lot) within twelve (12) months after commencing construction thereof, or such longer period as the Committee may approve in writing, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, scarcity of materials or other causes beyond the control of Owner. If the Owner fails to comply with this paragraph, the Committee shall notify the Association of such failure, and the Association at its option shall either complete the exterior of any structure in accordance with the approved plans or remove the structure, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

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

Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of said notice of completion thereof from the Owner, the work shall be deemed to be in accordance with said approved application.

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

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

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

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

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

(5) There shall be no exterior lighting of any sort either installed or maintained, the light source of which is visible from neighboring property, except as permitted by the Committee.

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

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

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

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

(f) General Restrictions Applicable to Common Property.

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

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

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

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

(4) All of the restrictions contained in Section 1(a) of Article V, except subparagraphs (1), (2), (3), (19) and (25), shall apply to a Common Property.

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

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

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

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

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

(B) That such improvement (i) is reasonably necessary for any utility installation serving any property within Kapalua or any property to be annexed to Kapalua, or any property for which an easement has been reserved or granted by Declarant or Declarant's Nominees, or (ii) if desirable in order to provide or improve access to or to enhance the use and enjoyment of any such

property; or (iii) is desirable to protect or preserve any property within Kapalua; and

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

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

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

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

(h) Damage and Destruction Affecting the Common Property.

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

(1) If:

(A) the insurance proceeds initially offered or paid by the insurer do not exceed the sum of Twenty Thousand Dollars ($20,000); and

(B) the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Twenty Thousand Dollars ($20,000); the insurance proceeds shall be paid to the Association, to be held and disbursed as hereinafter provided. The Association shall thereupon contract to repair or rebuild the damaged portions of the Common Property substantially in accordance with the original condition thereof. If the

insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Association shall levy a supplemental general assessment on all Owners to make up any deficiency which shall be levied in the proportion that the Owners share the general assessments provided for in Section 2 of Article IV hereof.

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

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

(B) The Board shall obtain firm bids (including a performance bond premium) from two or more responsible contractors to rebuild the Common Property substantially in accordance with its original condition. As soon as the Board has obtained bids, it shall call a special meeting of the Owners to consider the bids. At such meeting, the Owners may, upon affirmative vote of sixty-six and two thirds percent (66-2/3%) of all Voting Rights, elect to reject all such bids. Failure thus to reject all such bids shall authorize the Board to accept the bid it considers most favorable;

(C) If all such original bids are rejected, the Board may prepare and present to the Owners various alternative plans for repair and reconstruction. Before presenting any such plan to the Owners, however, the Board shall obtain approval of the Committee and obtain firm bids (including a performance bond premium) from two or more responsible contractors to perform the work of repair or reconstruction in accordance with each such plan. Such bids shall be considered at a meeting of the Owners

subject to supplemental general assessment as soon as possible after they have been obtained. The Owners may, upon affirmative vote of sixty-six and two-thirds percent (66-2/3%) of all Voting Rights, elect to reject all of such bids or, upon affirmative vote of fifty percent (50%) of all Voting Rights, elect to reject all such bids involving a total cost exceeding the amount of available insurance proceeds by more than Twenty Thousand Dollars ($20,000). Failure thus to reject all such bids shall authorize the Board to accept the bid it considers most favorable;

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

(E) If no such bid is accepted within twelve (12) months from the date such damage or destruction occurs, then the Board shall use any insurance proceeds to demolish and remove all damaged or destroyed structures or improvements from the Common Property and level

and landscape the sites thereof. If all of the said insurance proceeds are not required to perform this work, the excess not so required shall be deposited in the maintenance fund. If the insurance proceeds are not sufficient to accomplish such demolition and removal site finishing, then the Board shall levy a supplemental general assessment against the Owners in the same proportions that the Owners share general assessments as provided for in Section 2 of Article IV hereof.

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

Section 3. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise any remedy at law or in equity for the strict compliance with the Kapalua Protective Provisions.

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

(b) Any Owner of a Lot or Condominium Unit within the Development.

(c) The Association. If any person or entity brings an action for the enforcement of the Kapalua Protective Provisions, such person or entity shall be entitled to reasonable attorneys' fees if he or it prevails in such action.

Section 4. Community Design Committee.

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

(1) The Committee shall consist of three (3) to five (5) members as Declarant may determine from time to time.

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

(3) The right to appoint and remove members of the Committee shall be vested in the Board from and after the expiration of the eighteenth (18th) month following the date Declarant (A) owns in fee less than ten percent (10%) or (B) has leased to Owners other than Declarant or a company which is a subsidiary of or affiliated with Declarant more than ninety percent (90%) of the total square footage of all of the land then within Kapalua, unless, during such eighteen (18) month period, Declarant's percentage of fee ownership is increased to at least ten percent (10%) or the percentage of unleased land is decreased to no more than ninety percent (90%) of the total square footage of the land within Kapalua by reason of the annexation of property to Kapalua, in which event said eighteen (18) month period will not start to run until Declarant again owns less than ten percent (10%) or leases more than ninety percent (90%) of such land then within Kapalua. Upon the right to appoint and remove members of the Committee being vested in the Board, the appointment and removal of members of the Committee shall be made by the Board in accordance with the Bylaws.

(b) Committee Duties. It shall be the duty of the Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to these Kapalua Protective Provisions and to adopt Committee Rules, and to perform such other related duties from time to time delegated

to it by these Kapalua Protective Provisions and by the Association.

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

(d) Committee Rules. The Committee shall by vote have the exclusive power to adopt, amend and repeal rules and regulations, to be known as "Committee Rules", which interpret or implement the provisions of these Kapalua Protective Provisions insofar as they relate to matters within the jurisdiction of the Committee. A copy of the Committee Rules, as they may from time to time be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner. The Committee Rules may from time to time establish setback requirements, height limitations, landscaping requirements, structural requirements and restrictions on the minimum size and quality of structure permitted to be erected on Lots in Kapalua and such requirements and restrictions need not be uniform. No such

requirement or restriction shall apply to any structure constructed in accordance with plans and specifications previously approved by the Committee.

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

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

(1) A public hearing on the application for such variance is held by the Committee after giving ten (10) days prior written notice (A) to owners of property in Kapalua within a radius of one-half (1/2) mile of the subject property; and (B) to the Association; and

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

(g) Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Committee shall record an estoppel certificate executed by its authorized members certifying with respect to any property of said Owner, that as of the date thereof either (1) all improvements and other work made or done upon or within the property by the Owner, or otherwise, comply with the

Kapalua Protective Provisions, or (2) such improvements and/or work do not so comply, in which event the certificate shall also (A) identify the noncomplying improvements and/or work, and (B) set forth the nature of such noncompliance. Any purchaser from the Owner or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matter therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and any purchaser, mortgages or other encumbrancer.

(h) Liability. Neither the Committee nor any member thereof shall be liable to the Association, or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (1) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (3) the development or manner of development of any property within Kapalua, or (4) the execution and filing of an estoppel certificate, provided, however, that such member has acted in good faith.

Section 5. Exemption from Land Use Restrictions. The provisions of this Article V shall not apply to Lot A-4-A and Lot A-2 of the Kapalua Development Subdivision and any improvements thereon.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 1. Amendment. In addition to the rights reserved to the Declarant to modify or supplement the Kapalua Protective Provisions with respect to land annexed to Kapalua, the Kapalua Protective Provisions may, at any time, be repealed or amended, including an amendment to release any part, parts

or all of the Annexation Property from the limitations, restrictions, covenants and conditions contained herein, as follows:

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

(b) By affirmative vote, at a meeting of the Association duly held, of sixty-six and two-thirds percent (66-2/3%) of all Voting Rights of the Owners approving the proposed amendment or amendments, or the repeal in whole or part of the Kapalua Protective Provisions. The notice of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Kapalua Protective Provisions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be; provided, however, that no such amendment shall be effective until the Secretary or an Assistant Secretary of the Association has recorded a certificate setting forth in full the amendment or amendments to the Kapalua Protective Provisions so approved and specifically identifying any portion or portions thereof repealed, and certifying that said amendments or repealed portions have been approved by vote of the Owners pursuant to Section 1(b) of this Article VI.

Section 2. Audit. Any Owner may, at any reasonable time, and at his own expense, cause an audit or inspection to be made of the books and records of the Association, and the Association shall furnish to each Owner a copy of an audit of its books and records performed by a certified public accountant within ninety (90) days after the end of each calendar year.

Section 3. Attorneys' Fee. In any action brought by the Association to enforce the provisions hereof, whether legal or equitable, the Association shall be entitled to costs and a reasonable attorneys' fee as fixed by the Court if it is the prevailing party to the action.

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

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

Section 6. Original Subdivision and Development Work. Nothing herein contained shall be deemed to limit or restrict the right of Declarant, or Declarant's Nominees, their contractors, employees, materialmen or assigns from entering upon all or any portion of Kapalua for the purpose of conducting therein and thereon such work of subdivision, improvement, construction and development as Declarant or Declarant's Nominees may deem necessary or desirable; pro-

vided, however, that all such work shall be performed in accordance with the Development Plan and without cost or expense to any Owner other than Declarant or Declarant's Nominees, except in such instances where another Owner or Owners have expressly contracted for the performance of said work, or is otherwise responsible for such work pursuant to the provisions hereof.

Section 7. Easements to Governmental Agencies. Any easement (whether in fee, lease, or otherwise) which may be granted by Declarant for any purpose to any governmental department, agency, or other governmental entity of the County of Maui, the State of Hawaii, or the United States Government, may be granted free and clear of any and all requirements (including without limitation, any land use restrictions contained herein), under this Declaration of Covenants and Restrictions as Declarant and such governmental agency may require.

Section 8. Easements or Licenses for the Use of the Kapalua Golf Course, Tennis Courts and Other Recreational Facilities. Any easements and/or licenses for the use of the golf course, tennis courts and other recreational facilities constructed or to be constructed on the property subject to the Kapalua Protective Provisions, which may be granted by Declarant to individuals, persons, corporations and other entities, may be granted free and clear of any and all terms, covenants, conditions, restrictions, or reservations contained herein as Declarant may desire.

Section 9. General Reservations and Exceptions. The Declarant reserves and excepts to Maui Land & Pineapple Company, Inc., its successors and assigns (collectively the "Reservant"), forever, as appurtenant to lands of Reservant,

located in the District of Lahaina, Island and County of Maui, State of Hawaii, now owned and used or hereinafter acquired and used by Reservant (whether in fee, lease, or otherwise), in its pineapple plantation and other agricultural operations, the perpetual right and easement over and upon the lands submitted to the Kapalua Protective Provisions, to discharge and emit, diffuse and inflict, noise, smoke, soot, dust, pesticides, lights, noxious vapors, odors, and other minor nuisances of every description created by and resulting from the operations of Reservant in burning, harvesting, fertilizing, watering, use of pesticides, growing, planting, generating power, trucking, hauling, milling, and all other activities incidental to the operation of a pineapple plantation and all other agricultural activities of Reservant.

Section 10. Notices; Documents; Delivery. Any notice or any other document permitted or required by the Kapalua Protective Provisions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours (or ninety-six (96) hours if mailed to destination outside of the United States) after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at P.O. Box 187, Kahului, Maui, Hawaii 96732; if to an Owner, at the address from time to time given by such Owner to the Association for the purpose of service of such notice, or, if no such address has been so given, then at any Lot or Condominium Unit within Kapalua owned by the Owner; if to Declarant, at P.O. Box 187, Kahului, Maui, Hawaii 96732; if to a Declarant's Nominee, at the address from time to time given by such Nominee to the Association for the purpose of service of such notice, or, if no such address has been so

given, in care of Declarant; provided, however, that any such address may be changed from time to time by any Owner, or by Declarant or Declarant's Nominees, by notice in writing, delivered to the Association, or by the Association, but notice in writing delivered to all Owners. Notices to mortgagees shall be sent as aforesaid to the address furnished by such mortgagee to the Association.

Section 11. Right of First Refusal. Notice is hereby given that a right of first refusal has been given to The KBH Company to purchase the golf course known as "The Bay Course" from Maui Land & Pineapple Company, Inc., in accordance with that certain unrecorded Supplemental Agreement to the sale of The Kapalua Bay Hotel dated May 17, 1985.

Section 12. Costs and Expenses. Whenever the consent of the Declarant or the Committee or the Board is required by this Declaration, the Declarant, Committee or Board, as the case may be, shall have the right to charge its reasonable costs and expenses incurred by the Declarant, Committee or Board in reviewing any matter to which its consent is required, including costs and expenses to third parties such as architects, engineers, attorneys, etc.

Section 13. Dispute Resolution. In the event of any dispute or conflict between an Owner, the Association, the Board, the Committee or Declarant with respect to the design and/or operation and management of the Association and the Common Property (except in those instances where the consent or approval of the Declarant, the Committee or the Board is required at the discretion of the Declarant, the Committee or the Board as the case may be), or any other disagreement, controversy, dispute or conflict between any Owner, the

Association, the Board, the Committee or Declarant (except as set forth above), shall be resolved as follows:

(a) Meeting. In the event of any dispute or conflict as described above, and as a condition precedent to Submission of Disputes to a Professional (subparagraph (b) below), Mediation (subparagraph (c) below) and Arbitration (subparagraph (d) below), the parties to the dispute and any third parties involved in the dispute shall meet promptly in an effort to resolve the dispute.

(b) Submission of Dispute to a Professional. If the dispute is not resolved as a result of the meeting described in subparagraph (a) above, and as a condition precedent to Mediation (subparagraph (c) below) and Arbitration (subparagraph (d) below), the dispute shall be referred to a Professional (an architect, engineer, attorney, accountant, etc.) selected by Declarant for non-binding resolution of the dispute within fifteen (15) days of that meeting. The Professional shall issue its non-binding resolution of the dispute within fifteen (15) days of the date of submission.

(c) Mediation. If the dispute is not resolved as a result of Submission of the Dispute to a Professional as described in subparagraph (b) above, and as a condition precedent to Arbitration (subparagraph (d) below), the dispute shall be referred to the American Intermediation Society ("AIS") for nonbinding mediation before a mediator designated by AIS. Referral of the dispute to AIS shall occur within fifteen (15) days of the date a Professional issues its resolution of the dispute. The parties to the dispute shall meet with the AIS mediator within fifteen (15) days of the date the dispute is referred to the AIS. No formal discovery shall occur in connection with the mediation. All oral and written

communications to and from the mediator and the parties to the dispute shall be confidential and inadmissible for any purpose in any subsequent arbitration or litigation, and the parties shall agree to execute a standard form AIS Confidentiality Agreement prior to commencing the mediation. The mediator shall issue his nonbinding resolution of the dispute within thirty (30) days of his meeting with the parties to the dispute. The mediator's resolution shall be in the form of an oral, nonbinding opinion which addresses which party is likely to prevail on the merits at arbitration. The mediator's resolution, or any reference thereto, shall be confidential and inadmissible for any purpose in any subsequent arbitration or litigation.

(d) Arbitration. If the dispute is not resolved as a result of Mediation as described in paragraph (c) above, the dispute shall be decided by binding arbitration. The arbitration shall be held before a single arbitrator selected by mutual agreement of the parties. In the event the parties are unable to reach agreement on the arbitrator, an arbitrator shall be designated through application to the Circuit Court of the Second Circuit, State of Hawaii, pursuant to the provisions of Section 658-4, Hawaii Revised Statutes. The arbitration shall be conducted in accordance with the appropriate American Arbitration Association Rules (depending on the type of dispute), as modified by the rules specified in this subparagraph and in subparagraph (e) below. The parties shall have the right to join other third parties in any arbitration proceeding. Thereafter, the parties or such other third party shall be bound by and have the benefit of this arbitration agreement and the arbitrator's decision or award to the same extent as the parties. The decision or award rendered by the

arbitrator shall be final, and judgment may be entered upon it in accordance with Chapter 658, Hawaii Revised Statutes, in any court of competent jurisdiction thereof.

(e) Discovery in Arbitration. The parties to the arbitration shall be entitled to such discovery as would be available to them in the court of general jurisdiction in the county where the project is located and the arbitrator will have all of the authority of the court incidental to such discovery including, but not limited to, orders to produce documents or other materials and orders to appear and submit to deposition and to impose appropriate sanctions including, but not limited to, awarding against a party for failure to comply with any order. The rules of evidence for such court of general jurisdiction in equity matters will apply during the arbitration.

(f) Notice of Arbitration. Notice of the demand for arbitration shall be filed in writing with the other party or parties, and a copy shall be filed with the Declarant. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or by any shorter contractual limitations period.

(g) Waiver of Litigation. The provisions specified in this Section 13 are and shall be the exclusive remedy for the resolution of any claim or dispute as described above between any Owner, the Association, the Board, the Committee and the Declarant. The parties waive the right to commence litigation against the others over any such claim or dispute.

(h) Award of Attorneys' Fees, Expenses and Costs. The losing party in such arbitration (as determined by the arbitrator) shall pay all costs and expenses of the arbitration, including the prevailing party's reasonable attorneys' fees (as determined by the arbitrator) unless the arbitrator determines that there is no losing party, in which event each party shall bear the costs of its own witnesses and attorneys' and the other costs of the arbitration including the arbitrator's fee shall be paid equally by the parties.

CERTIFICATION

Mary L. Gifford, on behalf of the Board of Directors of the Kapalua Resort Association hereby certifies that the foregoing was adopted by the members of the Kapalua Resort Association at a meeting duly called and held on September 25, 1987, and that he has been duly authorized and directed by the Board of Directors of said Association to record this amendment in the Bureau of Conveyances of the State of Hawaii.

DATED: Maui, Hawaii, this 30th day of September, 1987.

KAPALUA RESORT ASSOCIATION

By Its Board of Directors

By Mary L. Gifford
Its Director

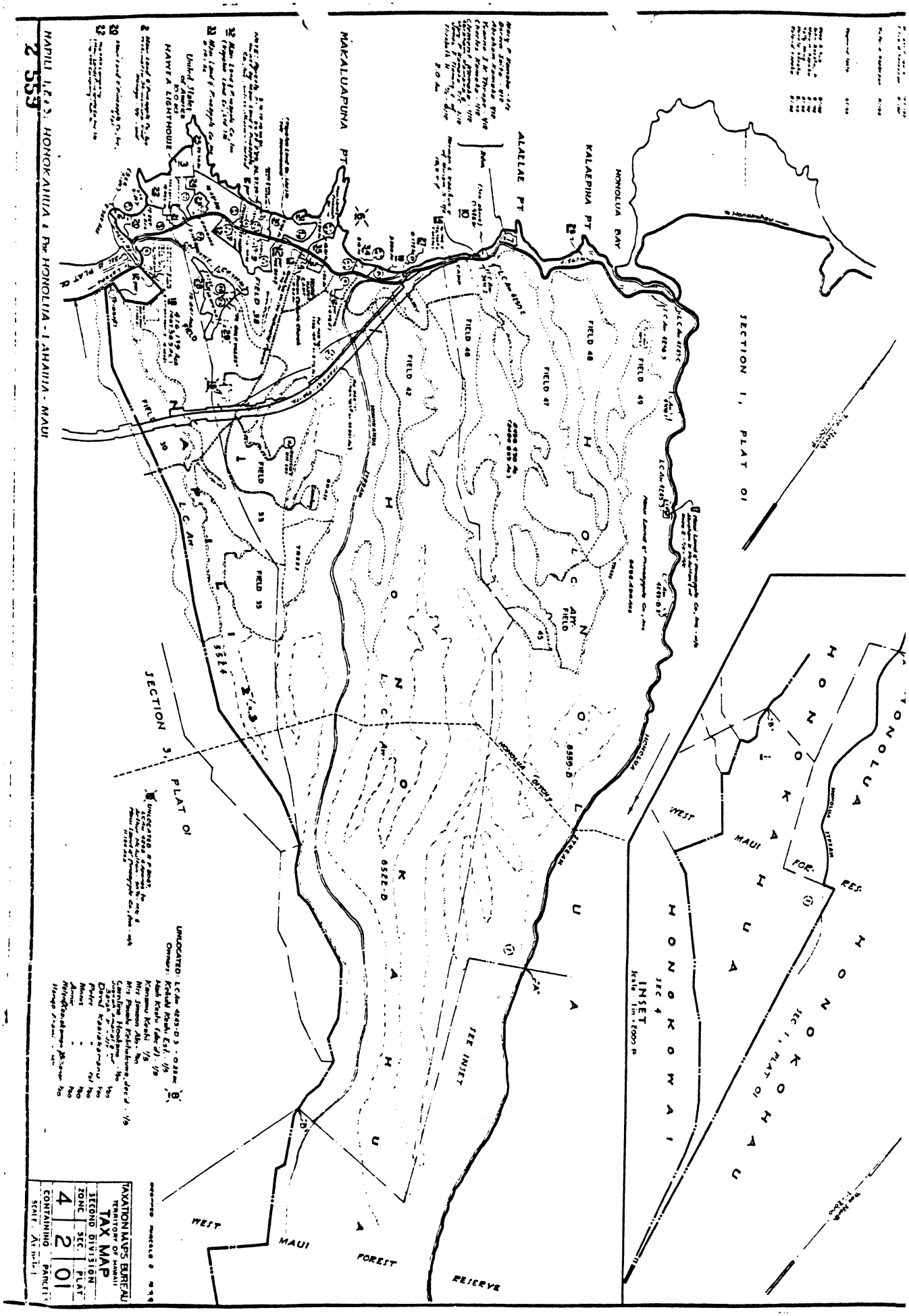
STATE OF HAWAII)
HI MAUI TC.)
~~CITY AND~~ COUNTY OF ~~HONOLULU~~) SS.

On this 26th day of September, 1987, before me appeared Mary L. Gilliard, to me personally known, who, being by me duly sworn, did say that he is a Director of the KAPALUA RESORT ASSOCIATION, a Hawaii nonprofit corporation, that the corporation has no seal, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said officer severally acknowledged said instrument to be the free act and deed of said corporation.

Pamela Clayton

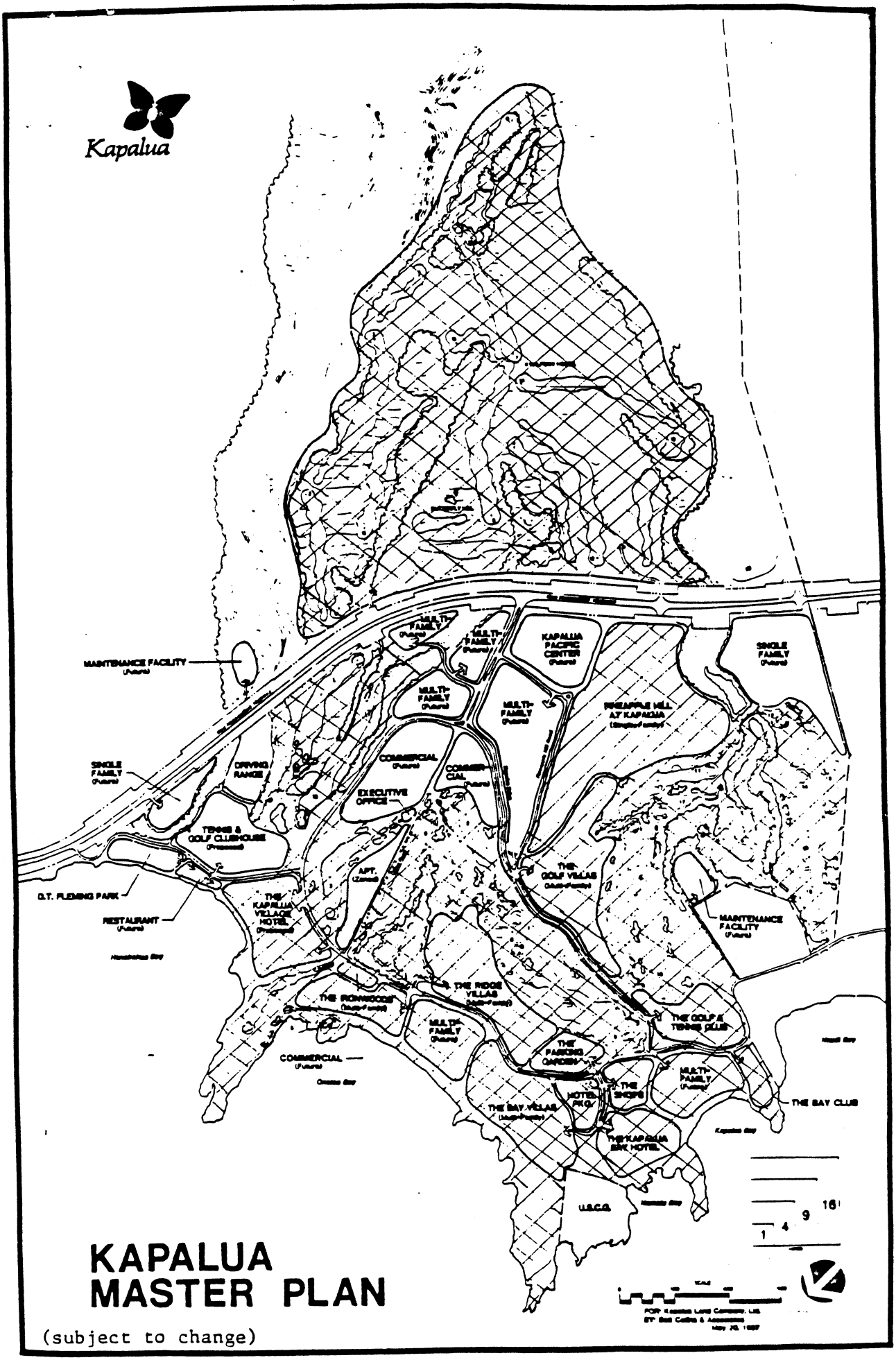
L.S.

Notary Public,
State of Hawaii
2ND CIRCUIT COURT
My Commission Expires: 7-12-91



NAPILI 1,2 & 3: HONOKAHUA & Por HONOLUA - LAHAINA - MAUI
2 553
MAKALUAPUNA PT
ALAELAE PT
KALAEPINA PT
HONOLUA BAY
SECTION 1, PLAT 01
SECTION 3, PLAT 01
HONOKAHUA
HONOLUA
HONOKOWAI
INSET
SEC 4
SEE INSET
WEST MAUI FOREST RESERVE
WEST MAUI FOR. RES.
HONOLUA STREAM
HONOKAHUA STREAM
HONOLUA DITCH
FIELD 30
FIELD 33
FIELD 35
FIELD 38
FIELD 42
FIELD 46
FIELD 47
FIELD 48
FIELD 49
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION
ZONE SEC. PLAT
4 2 01
CONTAINING PARCELS

EXHIBIT A


Kapalua
MAINTENANCE FACILITY (Future)
SINGLE FAMILY (Future)
DRIVING RANGE
EXECUTIVE OFFICE
TENNIS & GOLF CLUBHOUSE (Proposed)
D.T. FLEMING PARK
RESTAURANT (Future)
THE KAPALUA VILLAGE HOTEL (Proposed)
APT. (Zoned)
COMMERCIAL (Future)
COMMERCIAL (Future)
MULTI-FAMILY (Future)
MULTI-FAMILY (Future)
MULTI-FAMILY (Future)
KAPALUA PACIFIC CENTER (Future)
MULTI-FAMILY (Future)
PINEAPPLE HILL AT KAPALUA (Single-family zoned)
SINGLE FAMILY (Future)
THE GOLF VILLAS (Zoned multi-family)
MAINTENANCE FACILITY (Future)
THE RIDGE VILLAS (Zoned multi-family)
THE IRONWOODS (Zoned multi-family)
MULTI-FAMILY (Future)
COMMERCIAL (Future)
THE PARKING GARDEN
THE GOLF & TENNIS CLUB
MULTI-FAMILY (Future)
THE SHOPS
HOTEL (Proposed)
THE BAY VILLAS (Zoned multi-family)
THE KAPALUA BAY HOTEL
THE BAY CLUB
U.S.C.G.
KAPALUA
MASTER PLAN
(subject to change)