

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

Land Development Division

**MAR 02 2016**

Date

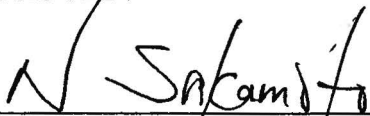
**ADDENDUM NO. 1  
TO  
REQUEST FOR PROPOSALS**

**RFP-16-HHL-004  
HAWAIIAN HOME LANDS RENTAL HOUSING IN THE VILLAGES OF LAIOPUA**

**Notice to All Prospective Offerors**

This addendum is hereby made a part of the contract documents for the Hawaiian Home Lands Rental Housing in the Villages of Laiopua, RFP-16-HHL-004, and it shall amend the said contract documents as detailed within this Addendum document.

APPROVED:



Norman L. Sakamoto, Acting Administrator  
Land Development Division  
Department of Hawaiian Home Lands

Please execute and immediately return the receipt below to the Department of Hawaiian Home Lands via facsimile to: **(808) 620-9299, Mr. Stewart Matsunaga, Master Planned Community Development Manager, Land Development Division.**

Receipt of Addendum No. 1 for Hawaiian Home Lands Rental Housing in the Villages of Laiopua, Request for Proposals No.: RFP-16-HHL-004, is hereby acknowledged.

Print: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Name of Firm/Company

\_\_\_\_\_  
Date

Addendum 1  
RFP-16-HHL-004  
Hawaiian Home Lands Rental Housing in the Villages of Laiopua

Inclusions:

1. Pre-Proposal Conference and Site Inspection Agenda
2. Revised Pre-Proposal Conference and Site Inspection Agenda (contains corrections, clarifications and responses to oral questions) 3-1-16
3. Pre-Proposal Attendance Sheets
4. Proposal Offer Forms OF-1, OF-1A, and OF-2; OF-3, if applicable
5. Office of Hawaiian Affairs Study: "An Assessment of Rental Housing Affordability and its Impact in Native Hawaiian Communities", 2015
6. Declaration of Covenants, Conditions and Restrictions of Villages of Laiopua (5/15/98)
7. Amended and Restated Declaration of Covenants, Conditions and Restrictions of Villages of Laiopua (5/17/11)
8. Modifications Rules and Guidelines, Villages of Laiopua (12/30/97)
9. Handbook for New Residential Construction, Villages of Laiopua (12/30/97)
10. Staff Notes- Marketing Summary and Current Waitlist Info (2/22/16)
11. Laiopua Village 5 As-Built Construction Plans
12. Laiopua Village 4 (Akau Subdivision) Construction Plans  
(As-Builts not yet available)

**HAWAIIAN HOME LANDS**  
**RENTAL HOUSING IN THE VILLAGES OF LAIOPUA**  
**RFP-16-HHL-004**

Pre-Proposal Conference & Site Inspection

10:00 a.m., Friday, February 19, 2016

West Hawaii Civic Center

74-5044 Ane Keohokalole Highway, Kailua-Kona, Hawaii 96790

**AGENDA**

**1. INTRODUCTIONS**

Hawaiian Homes Commission

- David Kaapu, West Hawaii Commissioner

Department of Hawaiian Home Lands (DHHL)

- Norman Sakamoto, Acting Administrator, Land Development Division
- Stewart Matsunaga, Master Planned Community Development Manager
- Isaac Takahashi, Housing Project Branch Manager
- Jeffrey Fujimoto, Design and Construction Branch Manager

**2. PURPOSE OF PRE-PROPOSAL CONFERENCE**

- RFP overview and site visit
- Procurement requirements
- Procurement schedule

**3. SCOPE OF WORK (General Description)**

Offerors shall provide a rental housing proposal targeting qualified low-income renters with an option to purchase the rental unit and to provide financial counseling, homeownership training, and economic benefits through various loan, grant and/or Low Income Housing Tax Credit programs. DHHL will also consider proposals which include other types of housing opportunities.

The target project location is Village 4 (Hema Subdivision) within the Villages of Laiopua. Lots in Village 5 are also available.

**4. PROCUREMENT NOTES:**

- This project is General Excise Tax (GET) exempt, and may be applied to all subcontractors, equipment, materials and supplies;
- This project is subject to the State Department of Labor and Industrial Relations' (DLIR) Wages Rate Schedules, per Chapter 104, Hawaii Revised Statutes;

And, if any Federal funds are incorporated,

Federal Labor Standards Provisions (Davis-Bacon). Current General Decision Number is: HI150001 12/11/2015.

\*Note- Wage rates in the General Decision Number (Federal) are locked-in 10 days prior to the Bid Opening date for the IFB, even if new rates are published. However, the wage rates in the State DLIR Wages Rate Schedule (currently Bulletin No. 486) are subject to change, and shall apply throughout the term of the contract.

- Prior to contract award, DHHL shall verify Offeror compliances with Section 3-122-112, Hawaii Administrative Rules, which involves clearances from the DCCA, DLIR, and State and Federal tax offices.

Failure to either provide the clearances noted in Sec. 3-122-112, HAR, or rectify a non-compliant status within ten (10) business days of notification may be grounds to disqualify an Offer. Therefore, it is highly recommended that Offerors register with Hawaii Compliance Express (HCE). To register with HCE, go to:

<http://vendors.ehawaii.gov>

- A Bid Security covering 5% of the bid offer will be required, if Offeror's proposal involves State sources of funds.
- If State sources of funds are used, Payment and Performance Bonds will be required for the contract, each covering 100% of the State funded portion.

## **5. CONTRACT TERMS AND LIQUIDATED DAMAGES**

- The Contract Time of Performance will be subject to the Offer.
- Liquidated damages: \$1,000.00 per calendar day, will only be applicable to State sources of funds for the vertical construction.

## **6. QUESTIONS/ANSWERS ISSUED BY LAST ADDENDA**

- A written summary of this Pre-Proposal conference will be issued by Addendum.
- Requests for clarifications and questions after this meeting shall be submitted in writing no later than 2:00 p.m., March 3, 2016, and may be faxed to: 808-620-9299, or E-mailed to: [Stewart.t.matsunaga@hawaii.gov](mailto:Stewart.t.matsunaga@hawaii.gov).



- Written answers to questions will be posted via Addenda on the DHHL website; any verbal responses by DHHL representatives shall not be binding.
- Interested Offerors are responsible to check the DHHL website for the issuance of any addenda up until the due date for Offers.

**7. QUESTIONS AND ANSWERS**

**8. SITE INSPECTIONS FOLLOWING PRE-PROPOSAL CONFERENCE**

Site construction plans for Village 4 (Hema Subdivision) are available upon request  
As-built site construction plans for Village 5 are available upon request  
Additional site inspections of the project site should be coordinated through the Contact Person.

**9. DEADLINES**

<b>SUBMITTALS</b>	<b>DEADLINES</b>
Notice of Intention to Offer (E-mail or Fax acceptable)	Not applicable at this time
Standard Qualification Questionnaire (Submittals for previous projects are NOT valid). (E-mail or Fax acceptable)	Not applicable at this time
Hawaii Products Preference (Form SPO-038), if applicable.	Not applicable
Written Questions from Offerors, if any.	2:00 P.M., March 3, 2016
Issuance of Last Addendum (assuming no change to the RFP's Offer submittal date.)	March 9, 2016

<p><b>PROPOSAL SUBMISSION</b></p> <ul style="list-style-type: none"><li>• Sealed Proposals due by <u>2:00 P.M., March 31, 2016</u> at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.</li><li>• The proposal submission deadline shall be according to the official clock established at the location proposals are received.</li><li>• Proposals will not be opened at that time stated above.</li><li>• Proposals submitted after Proposal submission deadline will be time-stamped, but not accepted or opened.</li><li>• Award of contract will be made to the responsible and responsive Offeror with the most viable project in accordance with the review criteria.</li><li>• DHHL is not required to accept the lowest priced proposal.</li></ul>	<p>2:00 P.M, March 31, 2016</p>

**HAWAIIAN HOME LANDS**  
**RENTAL HOUSING IN THE VILLAGES OF LAIOPUA**  
**RFP-16-HHL-004**

Pre-Proposal Conference & Site Inspection

10:00 a.m., Friday, February 19, 2016

West Hawaii Civic Center

74-5044 Ane Keohokalole Highway, Kailua-Kona, Hawaii 96790

**REVISED AGENDA 3/1/16**

**1. INTRODUCTIONS**

Hawaiian Homes Commission

- David Kaapu, West Hawaii Commissioner (Not in attendance)

Department of Hawaiian Home Lands (DHHL)

- Norman Sakamoto, Acting Administrator, Land Development Division
- Stewart Matsunaga, Master Planned Community Development Manager
- Isaac Takahashi, Housing Project Branch Manager
- Jeffrey Fujimoto, Design and Construction Branch Manager

**2. PURPOSE OF PRE-PROPOSAL CONFERENCE**

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Offerors shall provide a rental housing proposal targeting qualified low-income renters with an option to purchase the rental unit and to provide financial counseling, homeownership training, and economic benefits through various loan, grant and/or Low Income Housing Tax Credit programs. DHHL will also consider proposals which include other types of housing opportunities (including turnkey, self-help, multi-family rentals, kupuna rental).

The target project location is Village 4 (Akau Subdivision, 118 lots) within the Villages of Laiopua. 45 Lots in Village 5 are also available.

**4. PROCUREMENT NOTES:**

- This project is General Excise Tax (GET) exempt, and may be applied to all subcontractors, equipment, materials and supplies;
- This project is subject to the State Department of Labor and Industrial Relations' (DLIR) Wages Rate Schedules, per Chapter 104, Hawaii Revised Statutes;

And, if any Federal funds are incorporated,

Federal Labor Standards Provisions (Davis-Bacon). Current General Decision Number is: HI150001 12/11/2015.

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Failure to either provide the clearances noted in Sec. 3-122-112, HAR, or rectify a non-compliant status within ten (10) business days of notification may be grounds to disqualify an Offer. Therefore, it is highly recommended that Offerors register with Hawaii Compliance Express (HCE). To register with HCE, go to:

<http://vendors.ehawaii.gov>

- Proposal Security will not be required.
- At the time of contracting, if State sources of funds are used, including NAHASDA funds, Payment and Performance Bonds will be required for the contract, each covering 100% of the State funded portion. No bonds will be required for State or Federally issued Low Income Housing Tax Credit financing, nor Rental Housing Trust Fund financing. DHHL will provide bond forms at time of contracting.

## **5. CONTRACT TERMS AND LIQUIDATED DAMAGES**

- The Contract Time of Performance will be subject to the Offer.
- Liquidated damages: \$1,000.00 per calendar day, will only be applicable to DHHL sources of funds for the vertical construction.

## **6. QUESTIONS/ANSWERS ISSUED BY LAST ADDENDA**

- A written summary of this Pre-Proposal conference will be issued by Addendum.
- Requests for clarifications and questions after this meeting shall be submitted in writing no later than 2:00 p.m., March 3, 2016, and may be faxed to: 808-620-9299, or E-mailed to: [Stewart.t.matsunaga@hawaii.gov](mailto:Stewart.t.matsunaga@hawaii.gov).

- Written answers to questions will be posted via Addenda on the DHHL website; any verbal responses by DHHL representatives shall not be binding.
- Interested Offerors are responsible to check the DHHL website for the issuance of any addenda up until the due date for Offers.

## 7. QUESTIONS AND ANSWERS

- **Concerns related to market absorption and the DHHL waitlist. See Addendum 1 for OHA rental study and DHHL staff notes dated 2/22/16. 229 Undivided Interest lessees have first opportunity for any housing offer. Then, housing offer in rank order to the Hawaii Islandwide Residential list. Expansion to include other applicants from other islandwide residential waitlists will require Hawaiian Homes Commission approval.**
- **Native American Housing and Self-Determination Act (NAHASDA) funds are available. Offerors shall quantify and qualify the request for these funds.**
- **Proposals are not limited to single-family development. Offerors shall identify subdivision and infrastructure requirements, and various funding sources required.**
- **The Laiopua Undivided Interest program provides 99-year homestead leases to residential applicants on the Hawaii Island Residential Waitlist applicable to a future parcel yet to be determined and subject to conditions of the future offering. Laiopua Undivided Interest lessees were not subject to any financial qualification in order to participate in the program.**

## 8. SITE INSPECTIONS FOLLOWING PRE-PROPOSAL CONFERENCE

Site construction plans for Village 4 (Akau Subdivision) will be provided in Addendum. As-built site construction plans for Village 5 will be provided in Addendum. Additional site inspections of the project site should be coordinated through the Contact Person.

## 9. DEADLINES

SUBMITTALS	DEADLINES
Notice of Intention to Offer (E-mail or Fax acceptable)	Not applicable at this time
Standard Qualification Questionnaire (Submittals for previous projects are NOT valid). (E-mail or Fax acceptable)	Not applicable at this time
Hawaii Products Preference (Form SPO-038), if applicable.	Not applicable
Written Questions from Offerors, if any.	2:00 P.M., March 22, 2016

Issuance of Last Addendum (assuming no change to the RFP's Offer submittal date.)	March 31, 2016
<p><b>PROPOSAL SUBMISSION</b></p> <ul style="list-style-type: none"> <li>• Sealed Proposals due by <u>2:00 P.M., April 20, 2016</u> at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.</li> <li>• The proposal submission deadline shall be according to the official clock established at the location proposals are received. Early offers will be time stamped and accepted, but not opened.</li> <li>• Proposals will not be opened at that time stated above.</li> <li>• Proposals submitted after Proposal submission deadline will be time-stamped, but not accepted or opened.</li> <li>• Award of contract will be made to the responsible and responsive Offeror with the most viable project in accordance with the review criteria.</li> <li>• DHHL is not required to accept the lowest priced proposal.</li> </ul>	2:00 P.M, April 20, 2016

# SIGN-IN SHEET

	Company Name	Name of Representative	Telephone/Fax	E-mail
1	MARK DEV. INC	CARL CUNNINGHAM	808 735 9099	ccunningham.mdi@gmail.com
2	MARK DEV INC	PAUL WATASE	808 735 9099	pwatase-mdi@hawaii.m.com
3	IKAIKA OI HANA	RANDY HIN	808-829-1426	rhin@ikailcaohana.org
4	Patti Barbee	Hawaiian Dev. Board	808-358-2633	pattibarbee@gmail.com
5	Chris Fleherly	3 LEAF HOLDINGS	209-483-8105	cfleherly@3leafholdings.com
6	Armstrong Builders LLC	Chris Edwards	690-5550	cedwards@armstrongbuilders.com
7				
8				
9				
10				

SIGN-IN SHEET

	Company Name	Name of Representative	Telephone/Fax	E-mail
1	Coastal Coast	Chris Okamura	808-590-0979	OKAMURAC@COASTHI.COM
2	HREC	MAX NEWBERG	808 938 9758	mnewberg@hrec-hawaii.com
3	Big Island Housing Feltz	Debra D'Sorio	808 969 3327 <sup>fx 969 7608</sup>	bhf@bigislandhousing.com
4	Villages of Laiopua	DORA AIO <sup>PRESIDENT</sup>	808-3558689	Doraio kola@gmail.com
5	L2020	DORA AIO <sup>SECRETARY</sup>	808-327-1221	Doraio kola@aol.com
6	Armstrong Development	Daniel Sandomior	808-520-5276	daniel@armstrongdevelopment.com
7				
8				
9				
10				



SIGN-IN SHEET

	Company Name	Name of Representative	Telephone/Fax	E-mail
1	HHB & Assoc. / LAIOPUA 2020	MARK RACINE / FOR BOKANI LP2020	808 329-2591	mracine@hnbmail.com
2				
3				
4				
5				
6				
7				
8				
9				

**OFFER FORM  
OF-1**

HAWAIIAN HOME LANDS RENTAL HOUSING IN THE VILLAGES OF LAIOPUA

RFP-16-HHL-004

Honorable Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission  
Department of Hawaiian Home Lands  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Chairman Masagatani:

The undersigned has carefully read and understands the terms and conditions specified in the Request for Proposals, the General Conditions, and DHHL Construction General Conditions by reference made a part hereof; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture  
☐ Other \_\_\_\_\_  
\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

Date: \_\_\_\_\_ (x) \_\_\_\_\_  
Authorized (Original) Signature

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_ Name and Title (Please Type or Print)

E-mail Address: \_\_\_\_\_  
\*\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

**HHL RENTAL HOUSING  
IN THE VILLAGES OF LAIOPUA**

**RFP-16-HHL-004**

## *Basic Instructions for Packaging of Proposals*

1. Please package your proposal in 3-ring binder.
2. Major sections of the proposal shall be identified by "Tabs".
3. Section I of the Proposal shall be "Offer Form OF-1" and "Offer Form OF-1A".
4. Section II of the Proposal shall be "Offer Form OF-2".
5. Section III of the Proposal, if applicable, shall be "Offer Form OF-3"; Other Housing
6. Section III of the Proposal shall be exhibits. All drawings and exhibits to the proposal shall be neatly folded and clipped into the 3-ring binder.
7. Fill in all blank spaces with information requested; failure to provide all requested information may cause the proposal to be invalidated.
8. Please submit an original and five (5) copies of your proposal, for a total of six (6) sets.
9. An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

## OFFER FORM 1A

### DEVELOPER'S APPLICATION AND QUALIFICATION FORM

#### Section 1: General Information

Responsible Managerial Employee (RME) /Title	RME's E-mail Address
RME's Address	RME's Telephone No.
City, State, Zip Code	RME's Facsimile No.

#### List of Corporate Officers and Directors or Individual Partners, Joint Ventures or Owners

Name: _____	Name: _____
Title: _____	Title: _____
Telephone No.: _____	Telephone No.: _____
Address: _____	Address: _____
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Telephone No.: _____	Telephone No.: _____
Address: _____	Address: _____
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Telephone No.: _____	Telephone No.: _____
Address: _____	Address: _____
_____	_____

NOTE: Please attach separate page if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes.

**Corporate Shareholders Holding 25% or More of the Outstanding Shares:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**Section 2: Project Development Team**

	Company/ Address	Contact Person/ Telephone No.
Developer		
Architect		
Civil Engineer		
House Contractor ( <u>if different from above</u> )		
Financing		
Sales		
Legal		
Other (specify – attach additional sheets if necessary)		

### Section 3: Financial Information

**Note: Financial information submitted to DHHL shall be kept confidential and shall not be considered as a public record as defined in Chapter 92, Hawaii Revised Statutes. Financial information shall not be released without the express written consent of the applicant.**

1. Proposals shall include the following:
  - (a) If applicable, a certified copy of the Articles of Incorporation.
  - (b) If applicable, a certified copy of the By-Laws.
  - (c) If applicable, a certified copy of the Corporation Resolution which authorizes the applicant and borrowing or guaranty, if applicable.
  - (d) If applicable, a certified copy of the Partnership Certificate.
  - (e) If applicable, a certified copy of the Joint Venture Agreement.
  - (f) If applicable, a description of any financial default, modification of terms and conditions of financing to avoid default, or legal actions taken or pending against the applicant and borrowing and guaranteeing entities and their principals.
  - (g) One of the following:
    - 1) The two most recent audited annual financial statements;
    - 2) A statement of financial net worth; or
    - 3) A statement of bonding capacity.
  - (h) Certification that the Offeror is not in default or has failed to perform under any contract, agreement, development or design-build agreement, or lease with the State of Hawaii, and does not have any outstanding judgments.

#### Section 4: Resume of Offeror's Experience in Real Estate Development

The applicant must meet the following criteria:

A principal member of the Offeror's company must have at least five (5) years of real estate development experience; and a member of the Offeror's company who is responsible for day to day operations must have been materially involved in the development of at least three (3) separate projects with at least one project consisting of fifty (50) or more units.

Please attach a description of the Offeror's company experience which supports the foregoing requirement and which includes the following information:

- A. A list of housing projects developed;
- B. The role of the applicant in developing the listed housing projects;
- C. A brief description of the housing projects;
- D. If applicable, a description of all housing projects or facilities owned and operated by the applicant;
- E. If applicable, a statement of the applicant's past or current involvement with the Department of Hawaiian Home Lands (DHHL), Hawaii Housing Finance and Development Corporation (HHFDC), and/or the Hawaii Public Housing Authority (HPHA). Include a description of any assistance received from DHHL, HHFDC, and/or HPHA.
- F. If applicable, a statement of the applicant's past or current involvement with the application and implementation of housing development using Low Income Housing Tax Credit financing, various affordable housing grant programs, NAHASDA funds, Rental Housing Trust Fund, and/or any other sources of private or public financing.

OFFER FORM OF-2

**HAWAIIAN HOME LANDS RENTAL HOUSING IN THE VILAGES OF LAIOPUA  
RFP-16-HHL-004**

**Project Outline**

- A. Project Feasibility and Financing Model
- B. Project Schedule and Milestones
- C. House Construction Program
- D. Marketing and Rent-up Program
- E. Rental Management Program
- F. Applicant/Renter Financial Enhancement Program
- G. Lease Conversion Program
- H. Legal Issues
- I. Conditions / Exceptions



**HAWAIIAN HOME LANDS RENTAL HOUSING IN THE VILAGES OF LAIOPUA  
RFP-16-HHL-004**

**Proposal for Other Housing Opportunities, including but not limited to Turnkey, Self-Help  
and other Rental Housing types.**

**Table of Contents**

Basic Instructions

A. Schedule

B. House Plans and General Outline Specifications

C. Warranty Program

D. Financing

E. Green Building

F. Schedule

G. Conditions / Exceptions

## **A. PRICING SCHEDULE**

Offeror shall provide the cost estimate of each model "turnkey"/completed, vertical as well as lot improvements (including, but not limited to landscaping, driveway, utility connections, and rear and side fences. Cost estimates will include breakdown of profit and overhead per each model.

Offeror shall identify the minimum and maximum mix for the number of single-family units proposed.

The Contractor shall be responsible for compliance with Chapter 104, HRS, for the payment of minimum prevailing wages to mechanics and laborers employed on the Project for the corresponding work classifications as determined by the Department of Labor and Industrial Relations.

It is intended that gross income derived from the construction of all housing units will be certified for exemption from Hawaii General Excise Taxes pursuant to Section 201G-116 H.R.S. The proposed house prices shall not include any provision for GET.

Units by type and proposed price:

Model	Bedrooms	Bath-rooms	No. of Stories	Area (square feet)				Proposed Price
				Net Living	Carport	Patio/Lanai	Total	
A	2							\$
B	2							\$
C	3							\$
D	4							\$
E	5							

Optional Standard Features. These items will not be factored in the scoring of proposals, but may be included by DHHL in the final house package offered to the beneficiaries, or offered to prospective buyers as optional up-grades:

Feature	Model	A	B	C	D	E
Enclosed Garage, including electronic roll-up door		\$	\$	\$	\$	\$
Rain Gutters		\$	\$	\$	\$	\$
Irrigation Catchment System		\$	\$	\$	\$	\$
Fire-protection Sprinkler System		\$	\$	\$	\$	\$
Ceiling Fans		\$	\$	\$	\$	\$

Central air conditioning	\$	\$	\$	\$	\$
2 kW Photovoltaic system	\$	\$	\$	\$	\$

[other –add pages if  
necessary]

Options (Home-buyer consideration): These items will not be factored in the scoring of proposals, but would be offered to prospective buyers at the indicated prices:

Options	Model	A	B	C	D	E
Refrigerator		\$	\$	\$	\$	\$
Upgrade carport to enclosed garage with remote garage door opener.		\$	\$	\$	\$	\$
Flooring Upgrade		\$	\$	\$	\$	\$
Washer/ Dryer		\$	\$	\$	\$	\$
Cabinetry Upgrade		\$	\$	\$	\$	\$
Landscape Irrigation		\$	\$	\$	\$	\$

[other –add pages if  
necessary]

#### Cost Breakdown for Basic Models Without Options

Model	Materials	Labor	Overhead	Profit	Proposed Price
A	\$	\$	\$	\$	\$
B	\$	\$	\$	\$	\$
C	\$	\$	\$	\$	\$
D	\$	\$	\$	\$	\$
E	\$	\$	\$	\$	\$

ADA and DCAB regulations do not permit assessment of a surcharge to install options for accessibility. If the basic house design is not ADA-compliant, a contingency amount should be included in all house costs should buyer(s) require installation of accessible features.

## HAWAII PRODUCTS PREFERENCE

(Refer to Section 6.2 a. of the RFP)

DESIGNATION OF HAWAII PRODUCTS TO BE USED		
Description	Manufacturer	Cost FOB Jobsite
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____

It is further understood by the Offeror that if upon being granted Hawaii Products, and being awarded the contract, if the Offeror fails to use such products or meet the requirements of such preference, the Offeror shall be subject to penalties, if applicable.

**APPRENTICESHIP AGREEMENT PREFERENCE**

(Refer to Section 6.2 b. of the RFP)

The offeror hereby certifies that it will employ the following apprenticeable trades to perform the work for this project:

TRADE	APPRENTICESHIP PROGRAM SPONSOR

(Add additional sheets if necessary)

## **B. HOUSE PLANS AND OUTLINE SPECIFICATIONS**

Offeror shall submit conceptual house plan renderings and outline specifications for four house models. "Off the shelf" plans are acceptable. HUD, USDA, NAHASDA, and Villages of Laiopua design guidelines shall be followed in the design and construction of the homes. Offeror may highlight any special design features incorporated into its proposal.

The selected Offeror will be required to submit Composite Plot Plans showing the location of the house and driveway relative to the property lines, finish floor elevations, fine grading, including individual lot swales around the house for proper drainage toward the adjacent street or drainage structure and detailed schematic plans and outline specifications.

Offerors may provide schematic plans and outline specifications for a minimum of proposed single family units. Schematic plans shall include floor plans and elevations at a scale of 1/4" = 1'0". Outline specifications shall include preliminary information on the following items:

1. Foundation (including termite treatment)
2. Framing (including termite treatment)
3. Roofing
4. Partitions
5. Interior Wall Finishes
6. Exterior Wall Material & Finishes
7. Ceiling Finishes
8. Carpeting & Floors
9. Doors & Windows
10. Cabinetry
11. Fixtures & Appliances
12. Garage/Carport
13. Special Features (if any)

House plans shall be attached to Section III of the Proposal. Mark each sheet "Model A", "Model B", etc. In addition to the drawings submitted with the proposal, please submit one extra set of drawings (unfolded), and a reduced black and white version of all drawings in an 11" x 17" format.

### **C. WARRANTY PROGRAM**

Provide a brief description of the proposed warranty program, including:

1. Ground Soil Treatment
2. Defective Materials and Workmanship
3. Treatment of Structural Lumber
4. Appliances
5. Roofing Material
6. Common Area Landscaping and Maintenance
7. Infrastructure
8. Others



## **D. FINANCING**

Provide a DETAILED description of the proposed financing plan, including the following:

1. Sources of funds for construction.
2. Takeout financing for the interim loan.
3. Permanent financing that the Developer will provide to homebuyers, if any.
4. Grants or other financial assistance to be offered to applicants to rent and purchase their houses.

A letter of interest shall be provided by lending institution(s) acknowledging review of the Project as proposed by the Offeror and expressing interest in providing the proposed financing.

Please see the RFP regarding availability of the DHHL and/or NAHASDA funding. If proposing to utilize the DHHL and/or NAHASDA funds as interim construction financing, the deduction should be included in the house prices submitted in Section A. PRICING SCHEDULE.

## **E. GREEN BUILDING**

DHHL has identified a minimum two star rating using the Hawaii BuiltGreen Self Certification Checklist as the desired baseline standard for all Contractor-built homes. Offerors shall submit a completed Hawaii BuiltGreen Checklist that shows prospective measures to be included in all Contractor-built homes to achieve or exceed this goal.

Solar water heaters are a required measure to be included in all proposals. The value of any State and/or Federal tax credits made eligible by the use of solar water heaters should be passed on to the home buyer.

Offerors shall also submit a brief (not to exceed one page) narrative justification for the green building approach and a separate, brief narrative on how the design will promote building orientation-related benefits. Please read Exhibit L “Green Building” for more information on Hawaii BuiltGreen; a list of preferred strategies; resources that support residential green building in Hawaii, and a copy of the Hawaii BuiltGreen Checklist.

Attach the completed Hawaii BuiltGreen Self-Certification Checklist.

**F. SCHEDULE (at minimum, include the following milestones)**

Notice to Proceed (Assume June 1, 2016)

Lot selection, contracting

Plans and permits approved

Start construction of first house

Start construction of last house

Finish construction of first house

Finish construction of last house

**G. CONDITIONS / EXCEPTIONS**

Provide a brief description of any special conditions that are contained in your proposal, whether relating to pricing, plans, designs, specifications, costs, warranties, schedule or other factors.

List any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any.

# **An Assessment of Rental Housing Affordability and its Impact in Native Hawaiian Communities**

Hoʻokahua Waiwai (Economic Self-Sufficiency) Fact Sheet, Vol.2015, No. 1



Photo by Kai Markell

# Affordable Rental Housing in Native Hawaiian Communities

Ho'okahua Waiwai (Economic Self-Sufficiency) Fact Sheet, Vol.2015, No. 1.

Native Hawaiians have always valued stewardship of their surrounding natural resources as it connected them to the 'āina (land) and kai (ocean). These connections to resources created security and economic self-sufficiency within communities. Concepts of resource ownership in Hawai'i were very different than those of western society. Today, one way that Native Hawaiians re-establish their connection to the 'āina is through their housing. However, many Native Hawaiian 'ohana (family) struggle to achieve affordable and adequate housing amid Hawai'i's increasingly expensive housing market. Affordable and adequate housing supports health, education and well-being of the entire 'ohana and kaiaulu (community). The Office of Hawaiian Affairs (OHA) supports Native Hawaiians in improving their well-being through the implementation of a strategic plan, which places a priority on building stability in housing by increasing homeownership and reducing the percent of cost-burdened renters, who spend more than 30% of their income on rental housing costs. This measure of Native Hawaiian cost-burdened renters serves as OHA's Rental Affordability Indicator.



This Engraving appeared in 1819 in Freycinet's *Voyage Around the World*. Courtesy Bishop Museum Archives.

This fact sheet provides a comprehensive assessment of the distinct rental housing needs of Native Hawaiians. It is designed to inform community members and decision-makers on the diversity of housing needs in order to improve housing conditions for all Hawai'i residents. Affordable rental housing is a complex topic which requires an integrated understanding of demographics, income, rental expenses, the supply of housing units, and rental subsidies. Unfortunately, relevant information specific to Native Hawaiian rental housing needs and affordability is often fragmented, outdated, and incomplete.

To provide a nuanced discussion, this fact sheet summarizes findings on a variety of related topics, from the national U.S. housing crisis to a detailed analysis of OHA's Rental Affordability Indicator. Critical context for the indicator is provided through a review of key pieces of housing data including demographic and housing comparisons by county, Housing Choice Vouchers (HCV), Area Median Incomes (AMI), and Fair Market Rents (FMR). Each section concludes with the implication of these findings for the assessment and improvement of rental housing affordability for Native Hawaiians. In addition to identifying factors that affect current rental affordability, this report will also outline considerations that will impact future rental housing needs of Native Hawaiians.

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**OHA Research Disclaimer.** The data presented have been vetted for accuracy; however, there is no warranty that it is error-free. The data itself does not represent or confer any legal rights of any kind. Please use suggested citation and report discrepancies to the OHA Research Division.

## Affordable Rental Housing Crisis

### NATIONAL AFFORDABLE RENTAL HOUSING CRISIS

Affordable housing is defined by the U.S. Dept. of Housing and Urban Development (HUD) as “housing for which the occupants pay no more than 30% of their household’s gross income on housing-related expenses.” Numerous studies have documented the extent and severity of our national housing crisis. In summary:

- Despite economic recovery across the nation even moderate-income renters struggle to afford housing, especially in high-cost Metro areas (Harvard University, 2015);
- Although homeownership costs have fallen and rents have risen since 2010 (Ault, Sturtevant, & Viveiros, 2015), forecasts project that homeownership will decline and renting will increase through 2030 (Goodman, Pendall & Zhu, 2015); and,
- When rental housing is not affordable, financial stress results in overcrowding, frequent moves, and/or homelessness which subsequently leads to negative effects on health and well-being (Maqbool, Viveiros & Ault, 2015).

Historically, the government has attempted to address low-income housing affordability problems through the provision of rental housing subsidies like Housing Choice Vouchers (previously known as Section 8). Currently, however, the number of low-income eligible renters far outnumbers available subsidies. Additionally, due to increasing rental housing costs fewer renters will receive housing subsidies in 2015 than in 2005 (Harvard University, 2015).

### HAWAII AFFORDABLE RENTAL HOUSING CRISIS

Hawai‘i is also experiencing a housing crisis which stems from the high costs of living, and relatively lower wages statewide, coupled with limited availability of affordable housing. In 2014, Hawai‘i Appleseed Center reported that “Hawai‘i has been struggling with affordable housing for years and this challenge shows no signs of abating.”

- The *Hawai‘i Housing Planning Study, 2011* forecasted that between 2012-2016 the state would need 16,400 new rental units to meet housing demand; 80% of which needed to be affordable for low-income households. Between 2015-2025 approximately 65,000 new housing units would have been needed to meet population demands (DBEDT, 2015).
- Rental cost increases outpaced wages from 2005 to 2013 (Appleseed, 2014). In 2015, a two bedroom unit at Fair Market Rent is valued at \$1,644. In order to be affordable, this rent requires 2.3 full-time workers making \$14.49/hr (average renter wage) or 4.1 full time jobs making \$7.75/hr (minimum wage) (*Out of Reach, 2015*).



*“There’s not enough space for my children and I. The cost of rent is not worth it for a one bedroom unit, but I don’t have the means to afford another place that has a room for my family. It’s also far from everything I have to do.”*

*Native Hawaiian family of five (Hawai‘i Renters Strike-2013)*

### IMPLICATIONS FOR THE NATIVE HAWAIIAN COMMUNITY

- Relatively low wages and high rental costs created a rental housing crisis, which has affected and will continue to affect all renters through out Hawai‘i, including the Native Hawaiian population.



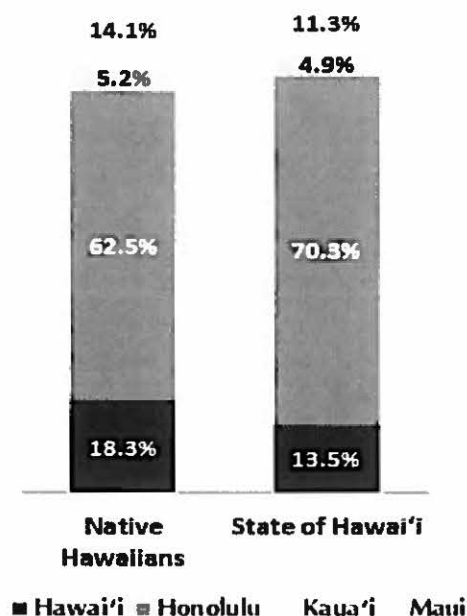
## Native Hawaiian Rental Housing Paradox

In 2013, 1 in every 5 Hawai'i residents were of Native Hawaiian descent. As depicted in Table 1, in comparison to State statistics, Native Hawaiians were:

- Less financially secure, as demonstrated by lower median family and household income, and a per-capita income of \$9,105 less per year than the state's total population;
- And yet, Native Hawaiians had relatively fewer cost-burdened renters than the state's total population (51.2% vs. 55.6%).

These figures are surprising, as one would expect a greater percent of Native Hawaiian renters to be cost-burdened than other renters in the State. However, the reverse is true. To understand this paradox, and to accurately interpret OHA's Rental Affordability Indicator, one must first analyze the distinct demographics characteristics of the Native Hawaiian population.

**Figure 1. County Populations as a Percent of Total Population (ACS 2006-2010)**



**Table 1. Native Hawaiians vs State in 2013**

Key Variables	Native Hawaiian	State of Hawai'i	Difference
Population	298,385	1,404,054	
Lower Native Hawaiian Income			
Median Household Income	\$65,688	\$68,020	-\$2,332
Median Family Income	\$72,762	\$80,316	-\$7,554
Per-Capita Income	\$20,472	\$29,577	-\$9,105
Lower Native Hawaiian Housing Costs			
Median Rent	\$1,274	\$1,414	-\$140
% Cost-burdened Renters	51.2%	55.6%	-4.4%
Younger Native Hawaiian Population			
% Children (<18)	34.5%	21.9%	+12.6%
% Seniors (>65)	8.1%	15.7%	-7.6%
Average Age (Years)	27.5	38.1	-10.6
Larger Native Hawaiian Households			
% Family Households	74.4%	69.1%	+5.3%
Mean Household Size	3.51	3.02	+0.49
Mean Family Size	4.04	3.61	+0.43
1.01+ occupants per room	14.5%	8.8%	+5.6%

Source: ACS-2013, 1-year estimate: DP02, DP03 and DP04 reports.

Such demographic considerations include:

- On average Native Hawaiians are younger and have more children, resulting in a median family size of 4.04 vs. 3.61 State median.
- Native Hawaiians reside predominately in family units (74.4%).
- As depicted in Figure 1, 70% of the State population lives in the City and County of Honolulu (Honolulu County). Therefore, most state statistics more closely resemble Honolulu statistics, than rural or non-metro counties which combined represent 30% of the state population.
- Compared to the distribution of the State population, a larger proportion of Native Hawaiians live in Hawai'i County (18.3% vs. 13.5%) and Maui County (14.1% vs. 11.3%). This means that county-level statistics are even more important for Native Hawaiians.

However, Native Hawaiian rental housing statistics by age of household, number of family members and county are not available annually. Thus, as housing markets rapidly adjust to multiple economic conditions, it proves difficult to make timely informed decisions regarding specific trends in Native Hawaiian rental housing needs.

### IMPLICATIONS FOR THE NATIVE HAWAIIAN COMMUNITY

- Assessment of rental housing needs of Native Hawaiians requires accounting of larger household sizes, family composition and county differences. Statistics that do not consider these differences (i.e. median family income, gross rents, percent of cost-burdened renters) do not provide a comprehensive comparison.

## Native Hawaiian Rental Housing: County Comparisons

When housing related estimates are collected from a five year period (2006-2010), more reliable and comprehensive housing statistic are provided on a county level.

**Table 2. Selected Comparisons for Native Hawaiians by County and Statewide vs. Hawai'i State Averages and Difference (ACS 5-year Estimates 2006-2010)**

Selected Variables	Native Hawaiians Only					State of Hawai'i	Difference (NH - State)
	Hawai'i	Honolulu	Kaua'i	Maui	Statewide		
<b>Native Hawaiian Population</b>	49,948	170,495	14,125	38,463	273,049	(1,333,591)	
% of Population: Native Hawaiian	27.7%	18.2%	21.6%	25.5%		20.5%	
Median Family Income	\$58,841	\$75,023	\$64,130	\$61,500	\$70,179	\$77,245	-7,066
Per Capita Income	\$17,953	\$20,451	\$17,937	\$18,113	\$19,536	\$28,882	-9,526
<b>Renters</b>	5,525	18,893	1,341	4,163	29,940	179,848	
% with >1.01 Occupants per room	19.3%	18.5%	21.6%	21.2%	19.2%	12.0%	+7.2%
% Studio	8.1%	7.5%	5.3%	7.9%	7.6%	8.2%	-0.6%
% 1 bedroom	11.6%	19.6%	8.1%	11.4%	16.5%	21.6%	-5.1%
% 2 bedrooms	37.5%	35.1%	34.7%	35.9%	35.6%	35.4%	+1.1%
% 3 bedrooms	36.9%	28.9%	41.5%	33.6%	31.6%	25.8%	+5.8%
% 4 bedrooms	4.5%	7.5%	8.3%	9.8%	7.3%	7.0%	+0.3%
% 5 or more bedrooms	1.3%	1.4%	2.1%	1.4%	1.4%	2.0%	-3.4%
% 3 or more bedrooms	42.8%	37.7%	51.9%	44.8%	40.3%	34.8%	+5.5%

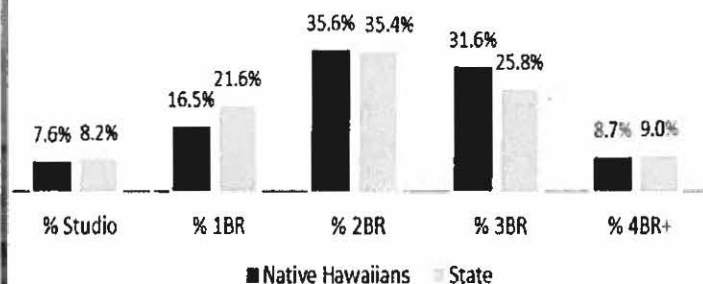
Source: ACS 5-year Estimates 2006-2010: DP02, DP03, DP04 and B25042 Tenure by Bedrooms reports.

From these detailed statistics, the following findings emerge:

### FINDINGS

- **Population.** Native Hawaiians as a percent of county population was largest in Hawai'i County (28%) and smallest in Honolulu (18%). Given that future state population estimates project growth primarily in rural counties, (DBEDT, 2012) it is likely that Native Hawaiians will contribute to this growth.
- **Income.** Native Hawaiians residing in rural counties typically had lower income levels than Native Hawaiians in Honolulu.
- **Occupants per Room.** A greater percent of Native Hawaiian renter households (19.2%) live in housing units that have more than one person per room used for living purposes than the total state population (12%), indicating higher rates over-crowding. Within Native Hawaiian communities, a greater percent of renter households in rural counties have more than one person per room than Honolulu (18.5%).
- **Unit Size.** As seen in Figure 2, 40% of Native Hawaiian renters lived in rental units of 3 or more bedrooms (BR) vs. 35% of the State population. Conversely, 5 percentage points fewer Native Hawaiians resided in 1 BR units (16.5% vs. 21.6%). A greater percent of Native Hawaiian renters in rural counties live in units of 3 or more BRs, in comparison to Native Hawaiian renters in Honolulu (37.7%).

**Figure 2. Comparison of Rental Units for Native Hawaiians vs. Hawai'i State Average (ACS 5 year Estimate, 2006-2010)**



### IMPLICATIONS FOR THE NATIVE HAWAIIAN COMMUNITY

- County comparisons are warranted. There are important distinctions between Native Hawaiians across counties that cannot be detected when comparing only statewide data. Due to previous and projected population estimates, indicating the future growth of Native Hawaiian populations in rural counties, these county comparisons merit consideration. Specifically, the size and cost of affordable rental units needed for Native Hawaiians differs depending on the county of residence.

## Housing Needs of Housing Choice Voucher Participants

The **Hawai'i Renter's Study 2013** (Navarrette & Derrickson, 2014) evaluated the housing needs of Native Hawaiians and non-Hawaiians who were either receiving or eligible for Housing Choice Vouchers (HCV or Section 8). Governmental housing assistance, like the HCV, provide:

*"Significantly less homelessness, housing instability; Reductions in adults psychological distress, domestic violence, school mobility, food insecurity and economic distress."*

(Grubis et al., Family Options Study, 2015)

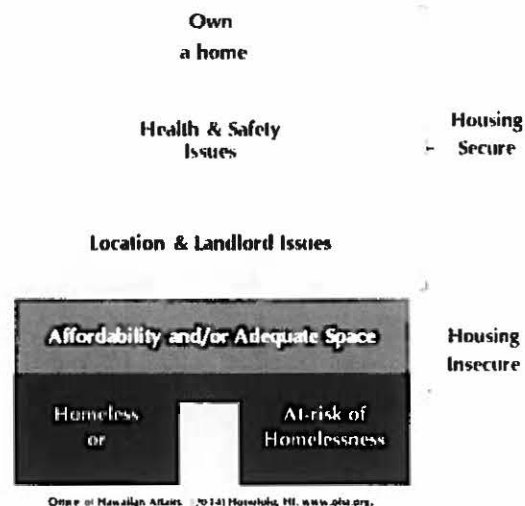
Findings confirmed that Native Hawaiians in need of rental housing assistance had many similarities to non-Hawaiians, but also had important distinctions:

**Similarities.** Based on qualitative data from low-income renters this study proposed a "Hierarchy of Rental Housing Needs." This hierarchy places the most fundamental housing needs on the bottom level, to illustrate that more basic needs must be met before one focuses on the next higher level. Renters defined as Housing Insecure do not have permanent housing or must make significant trade-offs between housing cost and adequate unit size. Renters defined as Housing Secure have met their basic housing needs, and, therefore, are able to prioritize issues such as location, health and safety and achieving homeownership. Classification on this scale was remarkably similar between Native Hawaiians and non-Hawaiians.

### Differences.

- 72% of HCV eligible Native Hawaiians had a household size of 3 or more vs. only 22% of non-Hawaiians.
- 71% of Native Hawaiians on a HCV waitlist desired homeownership vs. only 48% of non-Hawaiians.
- As depicted in Figure 4, Native Hawaiians generally preferred to live in rural areas and reported a greater need for 3-4 BR units than non-Hawaiians who generally reported higher needs for 1 BR units, near or in major cities.

Figure 3. Proposed Renter's Hierarchy of Housing Needs

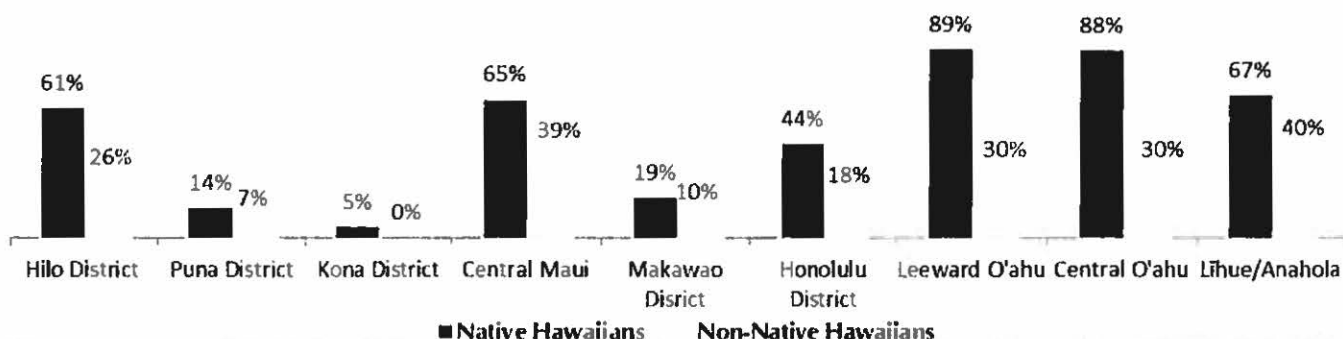


## NATIVE HAWAIIAN COPING STRATEGIES

The Hawai'i Renters Study documented three coping strategies utilized by Native Hawaiian families to mitigate high costs of rental housing:

- Living with family longer, for free or for substantially reduced payments (e.g. paying only electric or a few hundred dollars for a room).
- Living in rural areas (e.g. Leeward O'ahu) where rental costs are typically lower rather than metro areas, but commuting times are typically longer.
- Renting units with fewer rooms than needed in order to lower housing costs, resulting in higher rates of overcrowding.

Figure 4. Comparative Need for 3-4 Bedroom Units Across Nine Districts for Native Hawaiian vs. Non-Hawaiian HCV Household (HRS-2013)





## Affordability of Fair Market Rents

In order to assess the affordability of rental housing in each county of the State of Hawai'i, several factors are considered, including the median family income, Low-Income limits, and the value of fair market rents. These factors are dependent on family size and county of residence. This section provides an comparison of rental costs deemed affordable to rental costs typically experienced within each county.

## AREA MEDIAN INCOMES (AMI)

AMI annual statistical calculations are created from the median (middle) family income value for each county (HUDUSER, 2015). Although these statistics are not specific to Native Hawaiians, they are the most current and accurate assessment of income per county and household size. Selected FY2015 AMI for Hawai'i are presented in Figure 5. In summary:

- The 2015 AMI for Honolulu is \$86,900, 27% higher than other Hawai'i counties (\$68,200) and 7% higher than the statewide AMI of \$81,500.
- The 2015 AMI for Hawai'i County is \$62,400, only 72% of the Honolulu AMI.

**2015 Low-Income Limits.** Income thresholds are based on each county's AMI. For housing purposes, Low-Income is defined as 80% of the AMI and Extremely Low-Income (ELI) is defined as 30% of the AMI.

## FAIR MARKET RENTS (FMR)

FMRs are the 40<sup>th</sup> percentile of gross rent estimates, including utilities, for standard-quality rental units occupied by recent movers, calculated by county. They are used to determine the dollar amount of public rental housing subsidies. Again these statistics are not specific to Native Hawaiians, but they are available annually by county and bedroom size. FMRs represent the cost of a typical rental in a specific area.

In order to assess AMIs as they relate to FMRs, an adequate number of bedrooms for the size of the family must be determined. The Section 8 Guidelines for unit size (Rosen, 2014) outlines these complex standards. Generally, for units larger than a studio, the guideline is two persons per bedroom. However, depending on the number of cohabitating adults and the number of children over age 10 of the opposite sex, a family with four members could need as little as 2BRs or as many as 4BRs to be considered adequately housed.

Figure 5. Selected Hawai'i FY2015 AMI

Hawai'i County	\$62,400
Non-Metro (Rural) Hawai'i	\$68,200
Kaua'i County	\$74,200
Mau'i County	\$75,100
Hawai'i State	\$81,500
Honolulu (Metro Area)	\$86,900

Table 3 compares four statistics to assess the affordability of rental units for Low-Income families, across county and unit size. Table 3A presents the 2015 Monthly Low-Income thresholds (80% Annual AMI / 12 months) per county and family size, while Table 3B lists the corresponding monthly rent considered affordable (30% of monthly income) for a family at the Low-Income level. Table 3C represents the FMRs, assuming a standard of two persons per BR. The difference between the cost considered affordable and the typical cost of a rental is calculated in Table 3D (Affordable Rent — Fair Market Rent = Difference).

Overall the findings from Table 3 indicate that:

- FMR increases with unit size and generally aligns with AMI differences across counties.
- When AMI and FMR are compared by county, it appears that rental costs are most affordable across all unit size in Kaua'i County and least affordable in Honolulu.
- In Hawai'i and Honolulu County there is a gap between what low-income families can afford at 30% of their income and the typical cost of a rental unit at FMR (highlighted negative values in Table 3).

Ideally, these findings would be compared with the number of affordable units available for rent by bedroom size and county. Unfortunately, this information is not available, so the extent of the discrepancy between housing need and supply is uncertain. However, a new study on Hawai'i housing supply and demand is currently underway (DBEDT, HHFDC, 2015).

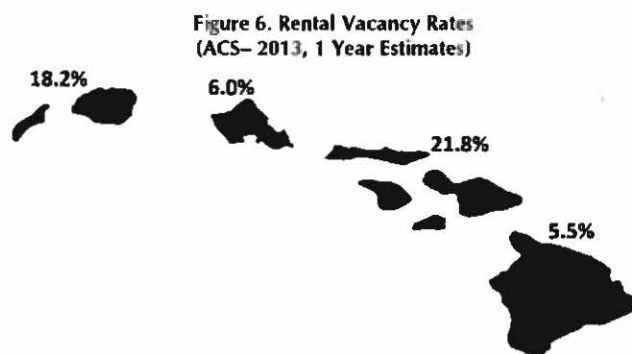
## Affordability of Fair Market Rents &amp; Rental Vacancy

Table 3. County Comparisons of Monthly AMIs, Affordable Rent vs. Fair Market Rents –2015

	Area	1 person	2 person	4 person	6 person	8 person
<b>A. Monthly Low-Income Threshold (80% AMI)</b>	State	\$3,783	\$4,321	\$5,404	\$6,267	\$7,133
	Honolulu	\$4,475	\$5,113	\$6,388	\$7,413	\$8,433
	Hawai'i	\$3,183	\$3,638	\$4,542	\$5,275	\$6,004
	Kaua'i	\$4,025	\$4,600	\$5,750	\$6,671	\$7,592
	Maui	\$3,583	\$4,096	\$5,117	\$5,938	\$6,754
	County	1 person	2 person	4 person	6 person	8 person
<b>B. Affordable Low-Income Rent [80% AMI x 30%]</b>	Honolulu	\$1,343	\$1,534	\$1,916	\$2,224	\$2,530
	Hawai'i	\$955	\$1,091	\$1,363	\$1,583	\$1,801
	Kaua'i	\$1,208	\$1,380	\$1,725	\$2,001	\$2,278
	Maui	\$1,075	\$1,229	\$1,535	\$1,780	\$2,026
	County	Studio	1 BR	2BR	3BR	4 BR
<b>C. Fair Market Rent</b>	Honolulu	\$1,260	\$1,374	\$1,810	\$2,667	\$3,061
	Hawai'i	\$749	\$945	\$1,151	\$1,552	\$1,943
	Kaua'i	\$895	\$903	\$1,222	\$1,663	\$1,969
	Maui	\$870	\$979	\$1,264	\$1,742	\$1,748
	County	1P-Studio	2P-1BR	4P-2BR	6P-3BR	8P-4BR
<b>D. Difference between Affordable Low-Income Rent (B) and FMR (C)</b>	Honolulu	\$83	\$160	\$106	-\$443	-\$531
	Hawai'i	\$206	\$146	\$212	\$31	-\$142
	Kaua'i	\$313	\$477	\$503	\$338	\$309
	Maui	\$205	\$250	\$271	\$38	\$278

## RENTAL HOUSING AVAILABILITY

Rental vacancy rates are the proportion of all rentals that are vacant or available for rent. They provide an overall indication of how housing supply meets demand. Lower vacancy rates implies more difficulty in finding a unit. As depicted in Figure 6, rental vacancies rates in 2013 for Honolulu and Hawai'i Counties were 5-6%, while rental vacancy rates in Maui and Kaua'i Counties were three times higher. This implies that rentals housing supply, and thus affordable rentals, is most insufficient in Honolulu and Hawai'i Counties.



## IMPLICATIONS FOR THE NATIVE HAWAIIAN COMMUNITY

- Although AMI and FMR data are not specific to Native Hawaiians, these statistics are included in this assessments of Native Hawaiian affordable rentals housing as they provide family income and housing cost specific to household size and county; factors which have a considerable impact on the housing of Native Hawaiian families.
- Native Hawaiians, with larger average family sizes (of 4 family members) and lower per capita income, are at a disadvantage in the competitive rental markets of Honolulu and Hawai'i counties (Figure 6).

## Rental Affordability Indicator and Non-Computed Renters

### BACKGROUND

OHA's rental affordability indicator measures the percentage of households that are cost-burdened, whose "Gross Rent as a Percent of Household Income" (GRAPHI) either meets or exceeds the 30% threshold. However, data as provided through ACS reports do not compute "units for which no rent is paid and units occupied by households that reported no income or a net loss" (Social Explorer) in the calculation. To assess if non-computed renters impact housing affordability assessment in the State of Hawai'i and Native Hawaiian communities, analyses of various GRAPHI data sources were completed. Key findings are summarized below.

**Table 3. Selected Comparisons for Native Hawaiians by County and Statewide vs. Hawai'i State Averages and Difference (ACS 5-year Estimates 2006-2010)**

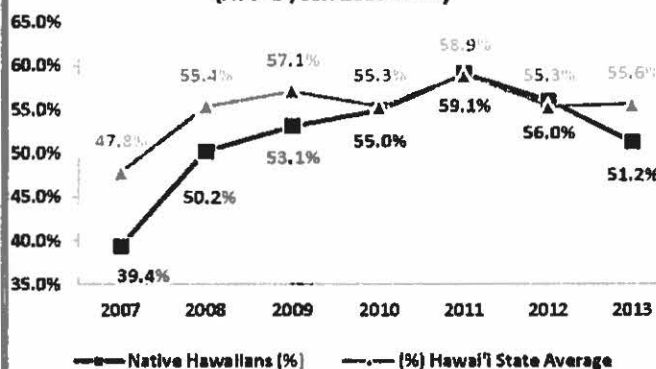
Selected Variables	Native Hawaiians Only					State of Hawai'i	Difference (NH - State)
	Hawai'i	Honolulu	Kaua'i	Maui	Statewide		
<b>Native Hawaiian Population</b>	49,948	170,495	14,125	38,463	273,049	(1,333,591)	
% of Population: Native Hawaiian	27.7%	18.2%	21.6%	25.5%		20.5%	
<b>Occupied Units Paying Rent</b>	4,814	17,252	1,253	3,523	26,842	162,587	
% Not computed <sup>a</sup>	14.8%	9.5%	7.0%	18.2%	11.5%	10.6%	0.9%
% Paying <30%	53.3%	49.1%	63.0%	45.0%	49.9%	54.6%	-4.7%
% Paying > 30%	46.7%	50.9%	37.0%	55.0%	50.1%	45.4%	+4.7%

Source. ACS 5-year Estimates 2006-2010: DP04. In these reports, although the % non-computed is reported in the DP04 report, it is not included in cost-burdened calculations, just like Table 1. See pages 11-14 for more details.

### RENTAL AFFORDABILITY WITHOUT NON-COMPUTED RENTERS

- **Statewide** rates of cost-burdened renters increased during the Great Recession, peaking in 2011, and remained higher than prerecession levels in 2013, confirming "the statewide housing crisis has not abated" (Hawaii Appleseed, 2014).
- **Native Hawaiians** by comparison reported rates of cost-burdened renters that were 5-8 percentage points lower than State rates though 2009, and again in 2013 were four percentage points lower than State rates.

**Figure 7. Percentage of Cost-Burdened Renters: Native Hawaiian vs. Hawai'i State (ACS- 1 year: 2007-2013)**



**Figure 8. Rental Affordability with Non-Computed Renters: ACS 1 Year 2013: State of Hawai'i**

	■ Paid 30% or more	% Non computed	■ Paid less than 30%
State of Hawai'i	51%	9%	41%
Maui County	41%	12%	47%
Kaua'i County	38%	11%	50%
Honolulu County	53%	6%	40%
Hawai'i County	49%	19%	32%

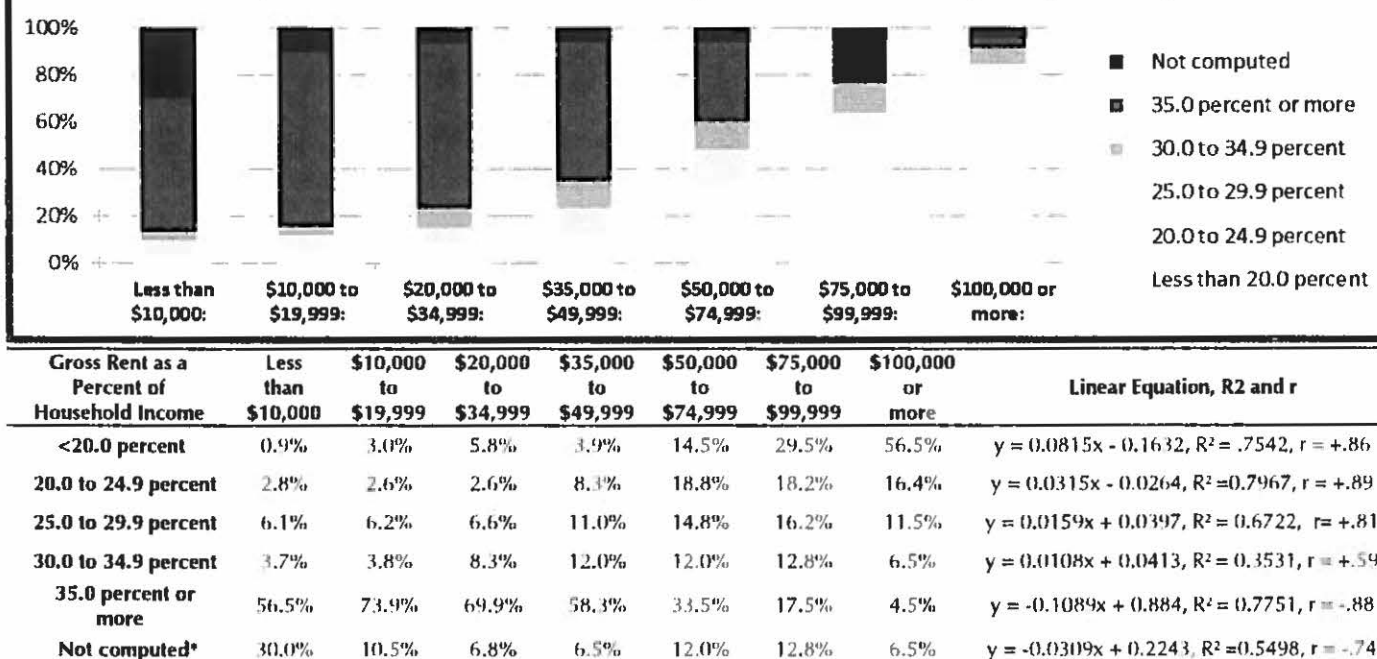
### RENTAL AFFORDABILITY WITH NON-COMPUTED RENTERS

#### State and County Comparisons

- 51% of Hawai'i renters were cost-burdened, 41% had affordable housing, and 9% were non-computed renters. Rates of cost-burdened renters were 5 percentage points lower when non-computed renters were excluded.
- Rates of cost-burdened renters in Honolulu and Hawai'i Counties were highest where rental vacancies were lowest.
- 19% of Hawai'i County renters, nearly 1 in 5, were classified as non-computed renters.

## Rental Affordability Indicator and Non-Computed Renters

Figure 9. GRAPI for the State of Hawai'i by Household Income Categories (ACS-2013)



Source: American Community Survey – 1 year estimate for the State of Hawai'i, B25074. \*Not-Computed are "units for which no rent is paid and units occupied by households that reported no income or a net loss" (Social Explorer, 2015).

In 2013, there were 183,426 occupied units in the State of Hawai'i for which rent was paid and 13,695 for which no rent was paid; for a total of 97,121 occupied rental units. Only 169,731 units were used to calculate the median rent of \$1,414, as reported in Table 1. However, 180,074 units were used to calculate the GRAPI, of which 17,047 (8.6%) were not computed; indicating the same total number of occupied units (197,121). This number of non-computed (17,047) is 3,352 more than the number of units for which no rent was paid and therefore must have been occupied by households that reported no income or a net loss in 2013.

Figure 9 indicates that in 2013:

- 30% of Hawai'i renters with incomes less than \$10,000 were non-computed; 60% were cost-burdened; and only 10% had affordable housing (less than 30% of income).
- 70% of Hawai'i renters with incomes from \$10,000 to \$49,999 were cost-burdened.
- Rates of non-computed renters varied across levels of income in a pattern similar to those paying more than 35% of their income on rental expenses. Only these two categories of housing expenses had negative correlation coefficients when income categories were plotted against categories of rental housing costs. All other levels of rental expenses had a positive correlation coefficient generally indicating greater affordability with higher household income.



Photo by Kai Markell



## Rental Affordability Indicator and Non-Computed Renters

**Figure 10. Rental Affordability with Non-Computed Renters: ACS 5 year 2006-2010: State Hawai'i**

	■ Paid 30% or more	% Non computed	Paid less than 30%
State of Hawai'i	49%	10%	41%
Maui County	49%	9%	42%
Kaua'i County	43%	10%	47%
Honolulu County	51%	9%	40%
Hawai'i County	44%	14%	42%

**Figure 11. Rental Affordability with Non-Computed Renters: ACS 5 year 2006-2010: Native Hawaiians**

	■ Paid 30% or more	% Non computed	Paid less than 30%
State of Hawai'i	45%	10%	45%
Maui County	47%	15%	38%
Kaua'i County	49%	10%	41%
Honolulu County	47%	9%	45%
Hawai'i County	41%	13%	46%

### Native Hawaiian vs. State Comparison.

The most detailed information about the extent of cost-burdened and non-computed Native Hawaiian renters is the 2006-2010 ACS 5 year dataset (Figure 10-11). During this time period:

- In comparison to all renters, a smaller percentage of Native Hawaiian renters were considered cost-burden in every county, except Kaua'i, where the percent of cost-burdened Native Hawaiian renters was 6 percentage points higher than countywide rates.
- In comparison to all renters, a smaller percentage of Native Hawaiian renters had affordable rentals in Kaua'i (41% vs. 47% countywide); and Maui County (38% vs. 42% countywide).
- Although 10% of all renters and 10% of Native Hawaiian renters were non-computed, rates varied substantially between counties. Notably, rates of non-computed Native Hawaiian renters in Maui county were 15%, 6 percentage points higher than the overall Maui County non-computed rate of 9%.

### 2006-2010 vs. 2013 Statewide Comparisons.

Five year data from 2006-2010 and one year data from 2013 (Figure 10 vs. Figure 8) are not perfectly equivalent, however, preliminary comparisons suggest:

- A 10 percentage point reduction in Hawai'i County residents who reported rental affordability (from 42% in 2006-2010 to 32% in 2013), which appears attributable to a 5 percentage point increase in cost-burdened renters and a 5 percentage point increase in non-computed renters.
- A 5 percentage point increase in Maui County residents who reported they were not cost-burdened (from 42% in 2006-2010 to 47% in 2013) and 3 percentage point increase among Kaua'i County residents;
- Increases in non-computed renters in all counties except Honolulu, where there was a percentage point drop since 2006-2010.

### IMPLICATIONS REGARDING THE RENTAL AFFORDABILITY INDICATOR

- **A smaller percent of Native Hawaiians residing in Maui and Kaua'i had affordable rental housing during the 2006-2010 time period than renters statewide, even without consideration of larger household sizes of Native Hawaiians.** This finding is significant as it indicates that Native Hawaiian statewide statistics do not hold true in every county and that county-level assessments of rental affordability for Native Hawaiians are warranted.
- **Data necessary to accurately assess** rental affordability for Native Hawaiians is not available annually and therefore is frequently outdated within the rapidly changing Hawai'i rental market.
- **There are several limitations of rental housing affordability indicators**, including that they do not consistently report non-computed renters and are not available annually for Native Hawaiians by county.

## ***E MĀLAMA I KĀ KĀKOU 'OHANA*** Take care of our families.

### **SUMMARY AND CONCLUSION**

One in five Hawai'i residents are Native Hawaiian. Many Native Hawaiians are under the age of 18; children who will contribute to Hawai'i population growth in the future, particularly in rural areas. Therefore, it is imperative that we understand the distinct demographics and housing needs of these communities. Most Native Hawaiian renters aspire to homeownership and many desire to live with, or close to, their 'ohana. (Navarette & Derrickson, 2014). Because the rental affordability indicator does not take household composition into account, generally excludes non-computed renters, and is not available annually at the county level, additional measures are warranted to assess the extent of the rental housing cost-burden on Native Hawaiians.

### **ACKNOWLEDGEMENT (MAHALO)**

The authors extend their gratitude to policy makers and researchers who make income and housing statistics available by Native Hawaiian household status. This research would not have been possible without your contributions.

Photo by Kai Markell

### **DEFINITIONS**

All underlined words are hyperlinks to the source of the defined term.

**American Community Survey (ACS)** is an ongoing survey that provides annual data about the U.S. and its people. Various ACS data sets were analyzed for this report, using ethnic code 062 for Native Hawaiians (alone or in any combination).

**Area Median Income (AMI)** is an annual statistical calculation created from the median (middle) family income value for each county. The AMI for Metropolitan areas, including the City and County of Honolulu, are calculated differently than for non-Metropolitan areas including Hawai'i, Maui and Kaua'i Counties.<sup>1</sup>

**Affordable Housing** is defined by the U.S. Dept. of Housing and Urban Development (HUD) as housing for which the occupants pay no more than 30% of their gross income, including utilities.<sup>2</sup>

**Cost-burdened** families are those who pay more than 30% of their income on housing and thus may have difficulty affording necessities such as food, clothing, transportation and medical care.<sup>2</sup>

**Extremely Low-Income (ELI)** is now defined as family income which does not exceed the federal poverty level or 30% of AMI. This definition was enacted in 2014 through HUD-implemented statutory changes.<sup>3</sup>

**Fair Market Rent (FMR)** is the 40<sup>th</sup> percentile of gross rent estimates, including utilities, for standard-quality rental units occupied by recent movers by county. HUD uses FMRs to determine the dollar amount of rental housing subsidies.<sup>4</sup>

**Gross Rent** is the amount of contract rent plus the estimated average monthly cost of utilities if these are paid for by the renter or paid for the renter by someone else.<sup>5</sup>

**Gross Rent as a Percentage of Income (GRPI)** is a computed ratio of monthly gross rent to monthly household income, and is the basis of OHA's Affordable Rental Housing Indicator.<sup>6</sup>

**Housing Choice Vouchers (HCV)** are the federal government's major program for assisting the homeless, very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market through a rental housing subsidy.<sup>7</sup>

**Low-Income** is defined as 80% of the AMI and is adjusted for number of people in the household.<sup>8</sup>

**Not-Computed GRPI** represent units for which no rent was paid and units occupied by households that reported no income or a net loss.<sup>9</sup>

**Per Capita Income** is the mean income for every man, woman, and child of a particular group. It is calculated by dividing the total income of the group by the total population of the group.<sup>10</sup>

**Rental Vacancy Rates** are the proportion of all rentals that are vacant or available for rent.<sup>11</sup>

**U.S. Department of Housing and Urban Development (HUD)** oversees federal housing programs including Community Planning and Development, Federal Housing Administration, and Public Housing programs.<sup>12</sup>

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R-767

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LAND COURT

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Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96812

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
VILLAGES OF LA'I'OPUA

KSC, FOS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
VILLAGES OF LA'I'OPUA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGES OF LA'I'OPUA is made on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by HOUSING FINANCE AND DEVELOPMENT CORPORATION, a body corporate and politic of the State of Hawaii (hereinafter called "Declarant"), whose principal place of business is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.

1. RECITALS

1.01 The Property.

Department of Land and Natural Resources of the State of Hawaii is the owner in fee simple of that certain real property located in the District of North Kona, County of Hawaii, State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property"), except for Village 3, more particularly described in Exhibit "B", attached hereto and made a part hereof, which is owned by the Department of Hawaiian Home Lands. Housing Finance and Development Corporation is the master developer of the Property and the Declarant herein.

1.02 The Initial Development.

Declarant intends to develop or convey to Developers who will in turn develop portions of the Property with single-family residences, multi-family residences, condominiums, rental units for low and moderate income families, elderly housing, special needs housing, schools, parks, churches, community facilities, open spaces, archaeological and botanical preserves and other complementary uses pursuant to the plan for a community development to be collectively named Villages of La'i'opua (hereinafter referred to as "Villages of La'i'opua"). The initial development is an area being developed by the Department of Hawaiian Home Lands (hereinafter referred to as "DHHL") as "Village 3", which is more particularly described in Exhibit "B" attached hereto and made a part hereof. Other portions of the Property will be annexed hereto and made subject to this Declaration pursuant to Article IV of this Declaration. The initial plan for Villages of La'i'opua is shown in Exhibit "A" attached hereto and made a part hereof.

1.03 Villages of La'i'opua.

Villages of La'i'opua will combine practical usefulness and economic benefit with aesthetic enjoyment in a complete town setting that will grow and intensify in its

uses, densities and activities, year by year, resulting in the establishment of an urban community, specifically distinct from a uniform, detached suburban development.

#### 1.04 Covenants, Conditions and Restrictions.

In order to enhance the orderly and proper development and use of the Property pursuant to the plan for Villages of La'i'opua, to protect the value, desirability and attractiveness of Villages of La'i'opua and to promote the quality of improvement and use of the Property as a whole, Declarant deems it necessary and appropriate to subject all of the Property to certain mutual covenants, conditions, and restrictions which will inure to the benefit of all present and future owners of the Property.

### 2. DECLARATION

#### 2.01 Declaration.

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

### 3. DEFINITIONS

#### 3.01 Defined Terms.

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

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

Apartment Owner: The Owner of an Apartment.

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

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

Association: Villages of La'i'opua Association, a Hawaii nonprofit corporation to be organized pursuant to Article 7, and its successors and assigns.

Association Member: The meaning as defined in Section 7.02.

Board: The Board of Directors of the Association.

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

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

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

Common Area: The portions of the Property (including drainage easements, flowage areas and open space areas) conveyed to the Association for the common use and benefit of the Owners or for the administration and management by the Owners, together with all of the Improvements constructed on any such portion of the Property from time to time, which Common Area shall not be considered a Lot. Common Area may include plant preserves within the Property as well as off-site plant preserves agreed to by Declarant and the United States Department of Interior.

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

Cotenancy Area: Any portion of a Private Area owned by more than one owner or a Sub-Association to be used by and maintained for multiple Owners, and any common area or limited common area as defined in a Sub-Declaration to be used by and maintained by such owners or the members of the Sub-Association, including, without limitation, roads, driveways, parks, open spaces and any common area or

limited common area as defined in a Sub-Declaration. A Cotenancy Area shall not be deemed a Lot. The interest of an Owner in a Cotenancy Area shall be deemed appurtenant to the Lot or Apartment owned by such Owner.

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

**Declaration:** This Declaration of Covenants, Conditions and Restrictions of Villages of La'i'opua.

**Declaration of Annexation:** This Declaration with respect to Village 3 described in Exhibit "B", and any Declaration of Annexation formally annexing additional Property subject to this Declaration.

**Developer:** A Developer designated by Declarant to develop any Private Area into Residences or Lots. There may be more than one Developer, and Declarant may act as a Developer. Developer includes DHHL as Developer of Village 3.

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

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

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

**Fill:** Any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches.

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

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

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

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

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

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

**Insured Mortgage:** A mortgage of a Lot securing a loan insured by HUD.

**Lot:** Within any Private Area, any residential Lot designated for residential use on a subdivision map, any Apartment in a Condominium or any residential unit within a rental apartment project, cooperative project or any other type of project consisting of multiple residential units. Upon the subdivision or consolidation of any Lots pursuant to Section 9.04, a Lot shall include each Lot, Apartment or residential unit into which such Lots have been so subdivided or consolidated.

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

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

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

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

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

**New Construction Committee:** The New Construction Committee created pursuant to Article 6 of this Declaration.



New Construction Design Handbook: The design guidelines and procedures adopted by the New Construction Committee pursuant to Section 6.03.

Notice: A notice delivered pursuant to Section 9.09.

Operating Fund: The fund created pursuant to Section 8.01.

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

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

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

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

Property: The real property, more particularly described in Exhibit "A", together with such other real property annexed thereto from time to time pursuant to Section 4.06.

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

Recreational Facility: Any improvement used for or in connection with any recreational purpose or activity, including without limitation, park and playground facilities, riding stables and trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and craft centers and swimming pools.

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

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

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

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

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

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

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

Subdivision Map: Any map showing a Subdivision recorded in the Bureau of Conveyances or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

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

Village 3: The first development to be developed, consisting of the property described in Exhibit "B".

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

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

#### 4. PROPERTY SUBJECT TO RESTRICTIONS

##### 4.01 Villages of La'i'opua: Initial Development.

(a) The real property initially subject to the Restrictions shall be the portion of the Property described in Exhibit "B" comprising Village 3, as the same shall be held, sold, conveyed, encumbered, leased, occupied and improved. The remaining portions of the Property may from time to time be annexed hereto pursuant to Sections 4.02, 4.03 and 4.07. A general plan of Villages of La'i'opua which shows the proposed size, location and land use of various developments to be developed within the Property is attached hereto as Exhibit "A". The general plan also shows the proposed

size and location of proposed Common Areas, which Common Areas are generally planned to serve the purposes of providing drainage and flowage areas, buffer zones, vehicular routes, rest areas and landscaped open spaces.

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

#### 4.02 Annexation of Property to Villages of La'i'opua.

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

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

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

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

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

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

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

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

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

#### 4.03 Annexation of Real Property to the Property.

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

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

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

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

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

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

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

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

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

#### 4.04 Additional Restrictions Affecting Added Real Property.

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

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

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

#### 4.05 Withdrawal of Property From Villages of La'i'opua.

Declarant may withdraw portions of the Property from Villages of La'i'opua thereby releasing such portions of the Property from the Restrictions without the consent of the Owners, provided that (a) Declarant or a Developer is the sole owner

of the portion of the Property to be withdrawn; and (b) such portion of the Property has direct access to a public roadway. Upon such withdrawal, such portion of the Property shall no longer comprise a portion of Villages of La'i'opua and shall be effective upon the execution and recordation of a document which describes such portion of the Property and declares such portions of the Property to be withdrawn from the provisions of this Declaration.

#### 4.06 Property Subject to Restrictions Limited.

(a) No real property, except for the Property and the real property specifically annexed to the Property pursuant to this Article 4, shall be deemed subject to the Restrictions, whether shown on any Subdivision Map recorded by Declarant or described or referred to in any document executed or recorded by Declarant. Nothing contained in this Declaration or in any Declaration of Annexation shall be deemed to be a representation or warranty that Declarant will commit or subject to the Restrictions any real property Declarant now owns or may hereafter acquire, other than the Property; and

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

#### 4.07 Annexation of Subsequent Developments.

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

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

(1) A Declaration of Annexation which:

(i) describes the real property to be annexed to Villages of La'i'opua;

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

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

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

(v) describes any conditions under which such real property shall become annexed to Villages of La'i'opua.

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

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

## 5. LAND CLASSIFICATIONS AND RESTRICTIONS

### 5.01 Land Classifications.

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

### 5.02 Private Area: Uses and Restrictions.

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

(a) Only one Family (including domestic servants and transient guests) shall occupy each Lot in the Private Area, and each Owner shall construct only one single-family Residence (which may include a guest room without a kitchen connected

to the main dwelling) on any Lot in a Private Area designated for single-family residential purposes. The foregoing provision will not be enforced in any manner that will constitute a violation of any applicable statute, ordinance, rule, or regulation adopted by any governmental authority, including, but not limited to, the provisions of the Federal Fair Housing Act and Chapter 515, Hawaii Revised Statutes, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(n) No Owner shall keep garbage or trash on any Lot so as to be visible from a Public Street, except in closed receptacles placed for garbage or trash removal or except as otherwise screened from view from the adjoining Public Street, and no accumulated waste plant materials will be permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be visible from a Public Street.

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

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

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

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

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

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

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

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

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

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

(y) No Owner shall install metal siding on a Residence, and no Owner may install liquid petroleum gas tanks on any Lot which are visible from a public street.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Committee shall have no power to vary any of the standards and restrictions set forth in the Restrictions, except as may be permitted herein or authorized by the Board or Declarant. The Association shall have the right to commence and pursue any remedy provided in the Restrictions for any violation by an Owner of the Restrictions, whether or not the Committee shall have approved plans and specifications.

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

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

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

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

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

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

#### 5.04 Common Area: Uses; Restrictions.

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

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

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

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

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above, Section 5.05 below, and Article 3 and Article 10 herein and the applicable subsections thereof, the Common Area shall be exclusively devoted to natural recreational uses which do not damage the Common Area or the vegetation therein, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to owners in their enjoyment of the Private Areas, or in their enjoyment of the Common Areas. Nothing herein is intended to prohibit recreational play (e.g., soccer, baseball, etc.) which would, by the very nature of the play, cause some damage to the vegetation and some increase in the cost of maintenance. The Board of Directors shall have the authority to regulate the type of recreational play permitted on the Common Areas. The following restrictions shall apply:

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

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

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

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

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

(g) The Common Area may include plant preserves within the Property which may be required by the United States Department of Interior for the preservation of certain endangered and proposed plant species. In lieu of additional plant preserves within the Property, off-site compensation areas, which are plant preserves located outside the Property, may be required in order to allow the development of certain lands within the Property. Whether a plant preserve within the Property or an off-site compensation area, these areas must be managed to perpetuate dry forest habitat and populations of the endangered plants found within the Property. Management activities would include, but not be limited to, three main activities: the control of alien plants and animals, the control of fire and the promotion of endangered plant populations. The use of such plant preserves shall be subject to such rules and restrictions as shall be imposed at the time of the conveyance of such areas to the Association as Common Area.

#### 5.05 Common Area: Construction and Alteration of Improvements.

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

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

shrub or other vegetation from or plant any tree, shrub or vegetation upon any Common Area;

(b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Common Area, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of six (6) feet or a trunk measuring six (6) inches or more in diameter at ground level from any Common Area to the appropriate Committee for approval in such form and containing such information as the Committee may from time to time require. The Committee shall approve the plans and specifications upon satisfaction of the following conditions:

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

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

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

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



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

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

(2) construct, reconstruct, replace or refinish any roadway improvement upon any portion of the Common Area designated on a Subdivision Map as a Road.

(3) replace any destroyed trees or any other vegetation in a Common Area, or plant trees, shrubs and ground cover, and install appropriate irrigation system.

(4) place and maintain upon any Common Area such signs as the Association may deem necessary for the identification of Villages of La'i'opua and of Roads for the regulation of traffic, parking and use of the Common Area and for the health, safety and general welfare of Owners and the public, provided that the design of any such signs first shall be approved by the Committee.

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

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

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

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

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

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

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

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

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

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

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

#### 5.07 Lots Owned by Exempt Organizations.

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

#### **5.08 Exempt Areas.**

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

#### **5.09 Presumption of Compliance.**

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

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

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

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

#### **5.10 Agricultural Operations.**

The Owner of each Lot by acceptance of a deed or lease for such Lot, shall be deemed to acknowledge that Villages of La'i'opua is located near or adjacent to land and easements used for and in connection with diversified agricultural operations,

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

Villages of La'i'opua are also located in the vicinity of a commercial airport, being the Keahole Airport, and there is the likelihood of noise from planes passing overhead or nearby.

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

Residents of the Villages of La'i'opua may also be subject to possible odor, air, noise and dust pollution resulting from the Queen Kaahumanu Highway, Kealakehe Parkway, Palani Road, and any other roadways which are within or adjacent to the project site.

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

## 6. NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE

### 6.01 General.

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

#### **6.02 New Construction Committee.**

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

#### **6.03 Modifications Committee.**

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

#### **6.04 Guidelines and Procedures.**

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

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

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

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

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

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

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

#### 6.04 No Waiver of Future Approvals.

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

#### 6.05 Variance.

The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstance such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall

(a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 6.06 Estoppel Certificate.

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

#### 6.07 Liability.

The New Construction Committee, Modifications Committee and any Member of the New Construction Committee or the Modifications Committee shall not be liable to the Association or to any Owner or to any other person for any damage or loss on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (c) the development of any Lot or (d) the execution and filing of an estoppel certificate pursuant to Section 6.06 or the accuracy of any facts stated therein; provided, however, that such Member has acted in good faith. The Committees, or any Member, may, but is not required to, confer with the Association or any Owner or Owner's Architect with respect to any plans, drawings or specifications or any other proposals submitted to such Committee.

#### 6.08 ~~Non-existence of Modifications Committee.~~

In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be sufficient Members of the Modifications Committee necessary to act on a particular matter for a period of at least twenty (20) days, then until there shall again be sufficient Members of the Modifications Committee, the President or any Vice President of the Association, shall act for the Committee, and such officer's certificate that there had been no Modifications Committee, or that the required Members were not present, and that he was acting pursuant to the authority of this Section shall be conclusive between the

Association, the Owners, any purchaser or mortgagee. The President or a Vice President acting under this Section shall be entitled to employ an Architect to render technical advice.

## 7. VILLAGES OF LA'I'OPUA ASSOCIATION

### 7.01 Organization.

The Association shall be organized as a nonprofit corporation under Chapter 415B, Hawaii Revised Statutes, as amended. The Association shall have the duties, obligations and powers set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws.

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

### 7.02 Association Membership.

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

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

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

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

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



termination of said agreement of sale. No Association Member may withdraw, transfer or otherwise dispose of such Association Member's Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which the Association Membership is appurtenant.

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

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

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

Declarant's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate upon the conveyance and transfer of all interest in the Property by Declarant to Developers, Owners, the Association and other third parties such that Declarant no longer retains any interest in the Property.

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

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

### 7.03 Voting Rights.

Association Members shall be entitled to vote as follows:

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

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

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

#### 7.04 Duties and Obligations Of the Association.

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

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

(b) The Association shall acquire, accept and hold title to all Common Areas and other real property from time to time conveyed to the Association pursuant to Section 9.05. The Association may also acquire, accept and hold title to any other real, personal or mixed property; provided that Association shall not carry on any business or trade for profit. The Association may charge reasonable fees to Owners for use of the Recreational Facilities on the Common Areas to defray the costs of construction, maintenance, repair or operation of Recreational Facilities, or of other facilities owned by the Association, where permitted under the Internal Revenue Code of 1986, as amended from time to time.

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

(d) The Association shall accept and undertake to fulfill any delegation, responsibility or liability for the upkeep, repair and maintenance in good order of any property and Improvements, including drainage facilities and equipment and landscaping, which obligation, responsibility or liability is imposed by or exists by virtue of law or which is imposed by or exists by virtue of a private agreement entered

into by Declarant or commitment made by Declarant to a Governmental Agency in the course of the development of the Property, whether or not the Association was or is made a party to such agreement or commitment;

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

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

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

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

(1) all Improvements owned by the Association and located upon any Common Area shall be insured against (i) loss or damage by fire (group I perils), (ii) the risks covered by the standard extended coverage endorsements (group II perils) and all risks (special perils), and (iii) such other hazards (including boiler and machinery comprehensive perils) or risks which a prudent businessman would insure against by an insurance company authorized to do business in Hawaii and in time of war against war damage to the extent such governmental insurance is obtainable at reasonable cost, in an amount as near as practicable to the full replacement costs thereof without deduction for depreciation through the replacement cost endorsement, and if applicable, the inflation guard endorsement to ensure policy limits are maintained at full replacement value, by blanket policy or policies in the name of the Association, and

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

Association may from time to time establish with due regard to prevailing prudent business practices in Hawaii.

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

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

#### 7.05 Powers of Association.

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

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

(b) In fulfilling any of its duties and obligations under the Restrictions, including, without limitation, its duties and obligations for the maintenance, repair, operation and administration of the Common Area or in exercising any of its rights to construct Improvements or other work upon any Common Area and any Recreational Facility, the Association shall have the following power:

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

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

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

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

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

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

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

(1) constructing, directing, operating and maintaining roads, public streets, walks, driveways, parkways and park areas;

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

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

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

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

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

expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Owners, or in improving the properties of the Association.

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

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

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

#### 7.06 Rules.

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

- (1) the use of Common Area, including Recreational Facilities by any Owner or by the Family, invitees, licensees, or lessees of such Owner;
- (2) the use of Roads;
- (3) the collection and disposal of refuse;

- (4) the burning of open fires;
- (5) the maintenance of animals within Villages of La'i'opua; and
- (6) the amount of the Initiation Assessment to be paid by each new Association Member.

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

- (1) parking restrictions;
- (2) maximum speeds for vehicular traffic on Roads;
- (3) the time or times when commercial vehicles may be permitted to use Roads owned by the Association; and
- (4) the types of vehicles other than passenger automobiles which may be permitted to use Roads owned by the Association.

(d) The Association shall maintain a copy of the Rules as adopted, amended or repealed from time to time, certified by the secretary of the Association, and shall deliver a duplicate copy to each Owner on his acquisition of a Lot, and shall deliver a copy of each new rule or amendment of an existing rule and notice of repeal of any rule to each Owner. The Rules shall be incorporated in and have the same force and effect as if they were a part of the Restrictions. Failure of any Owner to receive a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

#### 7.07 Liability of Members of the Board.

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

#### 7.08 Exclusive Powers of the Association.

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



#### **7.09. Association Newsletters.**

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

### **8. FUNDS AND ASSESSMENTS**

#### **8.01 Operating Fund.**

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

#### **8.02 Initiation Assessment.**

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

#### **8.03 Maintenance Assessments.**

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

(b) No later than thirty (30) days prior to the commencement of each Fiscal Year beginning with the first Fiscal Year in which the first annual meeting of the Association shall be held, the Board shall estimate the costs and expenses to be incurred by the Association during Fiscal Year in performing its duties and obligations including, without limitation, the cost of utilities for the Common Area, janitorial

services, trash disposal, repairs and maintenance, security, management, the cost of management contracts, supplies, wages and salaries of employees used in maintenance and general operations, payroll taxes (and similar governmental charges) with respect thereto, depreciation or rental of equipment used in operation and maintenance, accounting and bookkeeping expenses, the Association's legal fees and expenses and financing expenses relating to operation and management, and insurance premiums. In addition, the Board shall make a reasonable provision for contingencies, reconstruction and replacements and for alterations, modifications and improvements to existing Common Area and facilities, and for any development of new Recreational Facilities, and for all fees and expenses of the New Construction Committee and Modifications Committee and their operations. The Board shall subtract from the above imposed expenditures the following sources of income:

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

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

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

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

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

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

(d) The following real property shall not be subject to assessment: (1) the Property or portions of the Property not annexed to Villages of La'i'opua; (2) any portion of the Property which has not yet been subdivided into individual residential Lots; (3) Lots upon which the construction of proposed Residences has not been completed and such Residences are not fit for occupancy; (4) any Lot owned by a Governmental Agency or Exempt Organization as described under Sections 5.07 and 5.08; (5) Common Areas; and (6) Cotenancy Areas.

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

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

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

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

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

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

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

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

#### 8.04 Individual Special Assessments.

The Board shall levy a special assessment against any Owner whose acts or failure to comply with the Restrictions, the Rules, the Rules or Guidelines of the Committees or decisions resulted in the Association expending monies from the Operating Fund to enforce the Restrictions, the Rules, the Rules or Guidelines of the Committees or decisions. Such assessments shall be in the amount so expended and

shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, interest, all costs of enforcement, and engineers', Architects', attorneys', and accountants' fees incurred by the Association.

#### 8.05 Association, Declarant and Other Exemptions.

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

#### 8.06 Default in Payment of Assessments.

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

(b) The sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of assessments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot or the Purchaser or transferee of the obligation to pay prospective assessments. The Association may record such notice of default any time following the occurrence of

such default and may commence proceedings to enforce such lien at its discretion following such recordation. The Association may foreclose such lien by suit in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. The Association may also maintain a suit to recover a money judgment for unpaid assessments without foreclosing or waiving the lien on the Lot. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

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

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

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

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

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

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

## 9. MISCELLANEOUS PROVISIONS

### 9.01 Amendment or Repeal.

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

- (1) these Restrictions; or
- (2) the general plan of Villages of La'i'opua as described in Exhibit "A"; or

(b) These Restrictions may also be amended or repealed by the affirmative vote of not less than seventy-five percent (75%) of the total number of each class of Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum is present. The notice of such meeting shall state as a purpose the consideration of such amendment or repeal and shall include the proposed text of the amendment or identification of the provisions to be repealed. The Board shall be authorized to restate the provisions of this Declaration from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein or any provisions contained in any supplemental and/or annexing Declarations filed in accordance with the provisions hereof. The Board may record said restated Declaration in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

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

#### 9.02 Enforcement, Non-Waiver.

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

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

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

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

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

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

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

(b) No provision of the Restrictions shall excuse any person from observing any law or regulation of any Governmental Agency having jurisdiction over such person or over Villages of La'i'opua. If all uses to which a Lot may be devoted under the provisions of the Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use such Owner's Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Restrictions which lawfully apply to the Lot.

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

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

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

#### 9.04 Subdivision and Consolidation.

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

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

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

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

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

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

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



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

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

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

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

(e) Following the conveyance of Common Area by Declarant or by a Developer to the Association, Declarant or such Developer may, without the approval of any Committee, construct, reconstruct, refinish or alter any Improvement upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area if Declarant or such Developer shall determine that any such work (1) is reasonably necessary for any utility installation serving any property within Villages of La'i'opua, (2) is reasonably necessary for the construction of any facility for use by the Owners, (3) is desirable in order to provide access to or to enhance the use and enjoyment of the Common Area, or (4) is desirable to preserve any property which constitutes a part of Villages of La'i'opua.

#### 9.06 Assignment of Powers.

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

#### 9.07 Condemnation of Common Area.

If any portion of the Common Area or any interest therein shall be taken by eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any

portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation.

#### 9.08 HUD Approval of Actions.

Any provision contained in this Declaration to the contrary notwithstanding, so long as:

- (a) Any Lot in the Property is subject to the lien of an Insured Mortgage, and
- (b) Any Lot in the Property is owned by a Class B Association Member, HUD must approve any amendment to these Restrictions.

#### 9.09 Obligations of Owners, Avoidance, Termination.

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

#### 9.10 Notices, Documents, Delivery.

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

#### 9.11 Governing Law.

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

## 9.12 Captions/Gender/Plural vs. Singular.

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

## 10. IMPOSITION OF FINES

10.01 Imposition of Fines. The Board of Directors shall have the right, in addition to any other right set forth in this Declaration, the Articles of Incorporation, By-Laws, New Construction Design Handbook, Modifications Rules and Guidelines, or Association Rules, to impose monetary fines upon Owners, tenants, and any other person using or coming upon the Property or any part thereof for any purpose whatsoever, for violations of this Declaration, the Articles of Incorporation, By-Laws, New Construction Design Handbook, Modifications Rules and Guidelines, or Association Rules or any statute, ordinance, or applicable requirement of any Governmental Entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing Agent, the Manager, or other persons designated by the Board from time to time, to impose the aforementioned fines in accordance with such schedule. Notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, may be published at least once in an Association newsletter prior to the imposition of any fines thereunder. If published, said newsletter shall be mailed to all Owners at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate the schedule of fines or any fines imposed in accordance with this provision.

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

The Board shall adopt and may amend from time to time, appeal procedures to be followed by persons who believe that they have been wrongfully or unfairly fined. The Board may publish the initial appeal procedure and any amendments thereof at least once in the Association's newsletter before implementing the appeal procedure or any amendment thereof. If published, said newsletter shall be mailed to all Owners

at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate any fines imposed in accordance with this provision.

## 11. EFFECT OF THIS DECLARATION DURING TRANSITION PERIOD

11.01 Effect of This Declaration During Transition Period. Notwithstanding any provision to the contrary, this Section shall govern the application of this Declaration until the total number of Association Members is at least 500.

(a) No action pursuant to any of the following shall be effective without consent of the DHHL:

- (1) Annexation of property pursuant to Sections 4.02 and 4.03;
- (2) Imposition of additional restrictions pursuant to Section 4.04;
- (3) Withdrawal of portions of the Property pursuant to Section 4.05;
- (4) Conveyance of Common Areas and delegation of responsibilities to the Association pursuant to Sections 7.04 and 9.05;
- (5) Amendment of this Declaration by the Declarant pursuant to Section 9.01(a); and
- (6) Assignment of powers to the Association pursuant to Section 9.06.

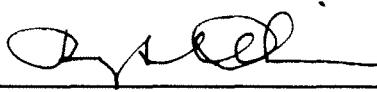
(b) DHHL's consent pursuant to subsection (a) above shall not be unreasonably withheld, but may be withheld on the basis that the proposed action would have a financial impact upon DHHL's homesteaders disproportionate to the benefits received.

(c) Notwithstanding the provisions of Section 8.05, the Declarant shall share in maintenance assessments under Section 8.03, to the extent that property owned by it benefits from maintenance responsibilities carried out by the Association. The Declarant's share of maintenance assessments shall equal the ratio of Declarant's

revenue-producing property benefitted, to the total of such Declarant's revenue producing property plus Private Area.

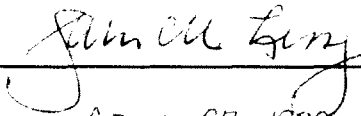
IN WITNESS WHEREOF, Declarant has executed this Declaration this <sup>29<sup>th</sup></sup> day of April, 1998.

HOUSING FINANCE AND DEVELOPMENT  
CORPORATION, a body corporate and politic of  
the State of Hawaii

By   
Its Executive Director

Approved as to Form and Contents:

ASHFORD & WRISTON

By   
Date: April 27, 1998

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
)  
)

SS.

On this 29th day of April, 1998, before me personally appeared Roy S. Oshiro, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Executive Director, of HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of said HOUSING FINANCE AND DEVELOPMENT CORPORATION; that said instrument was signed and sealed in behalf of said HOUSING FINANCE AND DEVELOPMENT CORPORATION by authority of its Board of Directors, and said Roy S. Oshiro acknowledged said instrument to be the free act and deed of said HOUSING FINANCE AND DEVELOPMENT CORPORATION.

Elaine Madrid <sup>LS</sup>

Notary Public, State of Hawaii

My Commission Expires: 9-29-2001

**CONSENT**

The Department of Hawaiian Home Lands, as the owner in fee simple of Village 3, described in Exhibit "B" attached to this Declaration of Covenants, Conditions and Restrictions of Villages of La'i'opua, hereby joins in and consents to this Declaration of Covenants, Conditions and Restrictions of Villages of La'i'opua.

Department of Hawaiian Home Lands

By   
Its

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

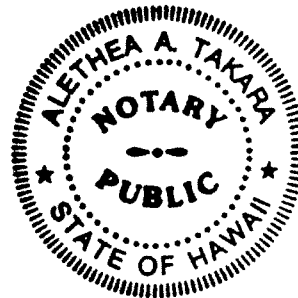
SS.

On this 14th day of May, 19 98, before me appeared KALI K. WATSON, to me personally known, who, being by me duly sworn, did say that he is the CHAIRPERSON, HAWAIIAN HOMES COMMISSION, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, and the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Alethea A. Takara

Notary Public, State of Hawaii

My Commission Expires: 9-5-99







**Villages of La'i'opua**  
JAN 1998

## EXHIBIT "B"

Lot 17, area 51.234 acres, of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128 recorded in the Bureau of Conveyances of the State of Hawaii, being a portion of the Government Land of Kealakehe, situate at Kealakehe, North Kona, County of Hawaii, State of Hawaii, more particularly described as follows:

Beginning at the northeast corner of this parcel of land and at the northwest corner of Lot 23 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Keahuolu" being 9587.33 feet North and 10,881.15 feet East, thence running by azimuths measured clockwise from True South: -

- |    |          |        |      |  |
|----|----------|--------|------|--|
| 1. | 1° 27'   | 389.91 | feet | along Lot 23 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 2. | 16° 56'  | 513.00 | feet | along Lot 23 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 3. | 328° 18' | 918.00 | feet | along Lot 23 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 4. | 355° 49' | 147.00 | feet | along Lot 19 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 5. | 48° 26'  | 167.00 | feet | along Lot 19 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 6. | 87° 56'  | 390.19 | feet | along Lot 18 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 7. | 348° 19' | 167.72 | feet | along Lot 18 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 8. | 335° 56' | 69.17  | feet | along Lot 18 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128; |
| 9. | 77° 57'  | 485.06 | feet | along Lot 20 of The Villages of  |

La'i'opua, Phase 1 as shown on File Plan 2128;

10. 59° 52' 130.43 feet along Lot 20 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
11. 150° 23' 35.35 feet along Lot 33 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
12. 240° 54' 17.00 feet along Lot 33 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
13. Thence along Lots 33 and 32 of the Villages of La'i'opua, Phase 1 as shown on File Plan 2128 on a curve to the right with a radius of 1943.00 feet, the chord azimuth and distance being:  
163° 16' 30" 832.81 feet;
14. 175° 39' 432.00 feet along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
15. 85° 39' 17.00 feet along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
16. 175° 39' 104.22 feet along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
17. Thence along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128 on a curve to the left with a radius of 740.00 feet, the chord azimuth and distance being:  
171° 33' 30" 105.60 feet;
18. 257° 28' 17.00 feet along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
19. Thence along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128 on a curve to the left with a radius of 757.00 feet, the chord

azimuth and distance being:  
149° 16' 472.88 feet;

20. 131° 04' 139.47 feet along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128;
21. Thence along Lot 32 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128 on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
175° 06' 54.7" 41.72 feet;
22. Thence along Lot 29 of The Villages of La'i'opua, Phase 1 as shown on File Plan 2128 on a curve to the left with a radius of 2590.00 feet, the chord azimuth and distance being:  
217° 19' 38.3" 166.00 feet;
23. 259° 24' 141.93 feet along R.P. 6855, L.C. Aw. 9971, Ap. 9 to W. P. Leleiohoku;
24. 262° 12' 20" 646.15 feet along R.P. 6855, L.C. Aw. 9971, Ap. 9 to W.P. Leleiohoku;
25. 262° 21' 30" 479.15 feet along R.P. 6855, L.C. Aw. 9971, Ap. 9 to W. P. Leleiohoku to the point of beginning and containing an Area of 51.324 Acres.

Subject, however, to the following reservations contained in Land Patent Grant No. S-15, 900, as follows:

"RESERVING TO THE STATE OF HAWAII, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING:

(1) All surface and ground waters appurtenant to the land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the land as may be required in the exercise of this right reserved.

Provided, however, that as a condition precedent to the exercise of the rights reserved herein, just compensation shall be paid to the Patentee for any of the Patentee's improvements taken."

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
Land & Natural Resources

DATE: 05/17/2011 08:02  
RCPT: 500329  
FROM: CITY & COUNTY, STATE OF HAWAII  
JOB: DHNL

NO CHG	2011-079702	.00
NO CHG		.00
	TOTAL	.00
	CHANGE	.00

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

BUREAU OF CONVEYANCES

DATE \_\_\_\_\_

DOCUMENT NO. **Doc 2011-079702**

**MAY 17, 2011 08:02 AM**

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK UP (X)

DEPARTMENT OF HAWAIIAN HOME LANDS  
ATTN: LAND DEVELOPMENT DIVISION  
P.O. BOX 1879  
HONOLULU, HAWAII 96813

TMK Nos. (3) 7-4-022:001 to 100; 102 to 105; 107  
(3) 7-4-023:001 to 128  
(3) 7-4-027:001 to 069; 071 to 118

Total Pages: 85

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
VILLAGES OF LA'I 'ŌPUA**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
VILLAGES OF LA'I 'ŌPUA**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGES OF LA'I 'ŌPUA** is made this 11<sup>th</sup> day of May, 2011, by the **DEPARTMENT OF HAWAIIAN HOME LANDS**, by its Hawaiian Homes Commission, **STATE OF HAWAII**, whose address is 91-5420 Kapolei Parkway, Kapolei, Hawai'i 96707.

**RECITALS**

A. On May 15, 1998, the Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua executed on April 29, 1998, by Housing Finance and Development Corporation, a body corporate and politic of the State of Hawaii ("HFDC"), as the "Declarant" therein, was recorded at the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document Nos. 98-069877 through 98-069878, against the real property, designated as Village 3, described in Exhibit "B-1" attached hereto and made a part hereof, and thereby subjecting said real property to the Restrictions, which was subsequently amended by (i) the First Amendment of Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua, recorded on November 2, 1998, at said Bureau as Document Nos. 98-164709 through 98-164710, (ii) the Second Amendment of Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua dated June 26, 2001, recorded on June 28, 2001, at said Bureau as Document Nos. 2001-099019 through 2001-099020 and (iii) the Declaration of Annexation - Village 4 (of Additional Property Subject to the Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua) dated June 26, 2001, recorded on June 28, 2001, at said Bureau as Document Nos. 2001-099017 through 2001-099018 ("Village 4 Declaration of Annexation") (collectively, the "Original Declaration").

B. Pursuant to Section 9.06 of the Original Declaration, Hawaii Housing Finance and Development Corporation, as the successor to HFDC, assigned to DHHL all of its rights, as "Declarant", under the Original Declaration by way of the Assignment of Declarant Rights dated August 25, 2010, and recorded on September 10, 2010, at said Bureau as Document No. 2010-134205.

**NOW, THEREFORE**, in consideration of the premises and the covenants and provisions hereof, pursuant to Section 9.01(a) of the Original Declaration, DHHL, as Declarant, hereby amends the Original Declaration in its entirety, and pursuant to Section 9.01(b) of the Original Declaration, DHHL, undertaking the functions of the Association which has not been created, hereby restates the Original Declaration, as hereby amended, in its entirety, as follows:

**1. VILLAGES OF LA'I 'ŌPUA**

**1.01 The Property.**

Declarant is the owner in fee simple of that certain real property located in the District of North Kona, County of Hawaii, State of Hawaii, depicted on the map attached hereto as Exhibit "A" and made a part hereof, including the following (herein collectively referred to as the "Property"):

(a) Village 3, more particularly described in said Exhibit "B-1" and made a part hereof;

(b) Village 4, as described in the Village 4 Declaration of Annexation; and

(c) Village 5, more particularly described in Exhibit "B-2" attached hereto and made a part hereof.

DHHL is the master developer of the Property and the Declarant herein.

#### 1.02 The Initial Development.

Declarant intends to develop, or authorize Developers to develop, portions of the Property with single-family residences, multi-family residences, elderly housing, special needs housing, schools, parks, churches, community and public facilities, open spaces, archaeological and botanical preserves and other complementary uses pursuant to the plan for a community development to be collectively named Villages of La'i 'Ōpua (hereinafter referred to as "Villages of La'i 'Ōpua"). The initial development are the areas developed by the Declarant as "Village 3", "Village 4" and "Village 5". Other portions of the Property will be annexed hereto and made subject to this Declaration pursuant to Article 4 of this Declaration. The initial plan for Villages of La'i 'Ōpua is shown in Exhibit "A".

#### 1.03 Villages of La'i 'Ōpua.

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

#### 1.04 Covenants, Conditions and Restrictions.

In order to enhance the orderly and proper development and use of the Property pursuant to the plan for Villages of La'i 'Ōpua, to protect the value, desirability and attractiveness of Villages of La'i 'Ōpua and to promote the quality of improvement and use of the Property as a whole, Declarant deems it necessary and appropriate to subject all of the Property to certain mutual covenants, conditions, and restrictions that will inure to the benefit of all present and future owners, lessees and occupants of the Property.

## 2. DECLARATION

#### 2.01 Declaration.

Declarant hereby declares that all of the property described in Exhibit "B-1" and Exhibit "B-2", the property described in the Village 4 Declaration, and any other portions of the Property which become annexed thereto as provided herein, shall be held, sold, conveyed, encumbered, leased, occupied, used and improved, subject to the covenants, conditions and restrictions (hereinafter called the "Restrictions") set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value,

desirability and attractiveness of the Property. The parcel of land, known as Village 3, described in Exhibit B-1" is held and shall be held, sold, conveyed, encumbered, occupied, used and improved, subject to this Declaration, which land shall be classified Private Area and Common Area (as set forth in said Exhibit "B-1") under this Declaration, and that the Developer for said land shall be its owner in fee simple, DHHL, or its designee. These Restrictions shall create mutual equitable servitudes upon each Lot within the Property in favor of every other Lot (as hereinafter defined) and shall create reciprocal rights and obligations in, between and among all persons and entities having any right, title or interest in and to any Lot within the Property. In addition, the Restrictions shall run with such portions of the Property annexed hereto and all Lots therein and shall be binding upon all parties having or acquiring any right, title or interest in and to the Property or any Lot therein, and shall inure to the benefit of Declarant, Developers, the Association and each Lessee (all as hereinafter defined).

2.02 Annexation of Village 5. Pursuant to the provisions of Section 4.02 hereof, Declarant does hereby declare that there shall be annexed to the properties already annexed to this Declaration, the parcel of land, known as Village 5, described in Exhibit "B-2", that said land is held and shall be held, sold, conveyed, encumbered, leased, occupied, used and improved, subject to this Declaration, which land shall be classified Private Area and Common Area (as set forth in said Exhibit "B-2") under this Declaration, and that the Developer for said land shall be its owner in fee simple, DHHL or its designee.

### 3. DEFINITIONS

#### 3.01 Defined Terms.

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

Act: The Hawaiian Homes Commission Act of 1920, as amended, and the rules and regulations promulgated thereunder, including Hawai'i Administrative Rules, Title 10, as the same may be amended.

Archaeological Preserve: The parcels of land, including easements and flowage areas, depicted as an Archaeological Preserve on the Preserve Map or described in a Declaration of Annexation to protect and enclose archaeological features and/or burials, determined by DHHL to be preserved in place, usually but not necessarily after consultation with SHPD and/or the Burial Council. An Archaeological Preserve may be annexed to this Declaration and/or classified, leased, licensed or otherwise delegated to the Association as Common Area for the benefit of, and conditional use by, the Lessees, and/or for the administration and management by the Association, together with all of the Improvements constructed on any such portion of the Property from time to time, which Archaeological Preserve shall not be considered a Lot.

An Archaeological Preserve may also be designated as a Plant Preserve by DHHL, in which case the uses and restrictions relating to both Archaeological Preserves and Plant Preserves shall be applicable to such a dual designated Preserve area. In the event of conflicts between the uses and restrictions described for an Archaeological Preserve, and the uses and

restrictions described for a Plant Preserve, the uses and restrictions applicable to Plant Preserves shall govern.

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

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

Assessments: Initiation Assessments, Maintenance Assessments, Special Assessments and all other assessments, fees and charges levied by the Association, collectively.

Association: Villages of La'i 'Ōpua Association, a Hawaii nonprofit corporation, organized pursuant to Article 7, and its successors and assigns.

Association Member: The meaning as defined in Section 7.02.

Board: The Board of Directors of the Association.

Burial Council: Hawaii Island Burial Council of SHPD, and its successors and assigns.

By-Laws: The By-Laws of the Association, which By-Laws have been or shall be duly adopted by Declarant, acting as the Association pursuant to Section 7.01 hereof, as the same may be amended from time to time.

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

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

Common Area: The portions of the Property, including drainage easements, flowage areas, landscaping areas and open space areas, classified as such herein or in a Declaration of Annexation, or leased, licensed or otherwise delegated to the Association for the common use and benefit of the Lessees or for the administration and management by the Association, together with all of the Improvements constructed on any such portion of the Property from time to time. Common Area shall not be considered a Lot. Common Area may, but is not required to, include Archaeological Preserves, if designated or classified as such by DHHL, or leased, licensed or otherwise delegated to the Association as Common Area.

Cotenancy Area: Any portion of a Private Area leased to more than one Lessee to be used by and maintained for multiple Lessees, including, without limitation, drainage, landscaping, walls, fences, roads, driveways, parks, and open spaces. A Cotenancy Area shall not be deemed a Lot. The interest of a Lessee in a Cotenancy Area shall be deemed appurtenant to the Lot leased by such Lessee.

County: The County of Hawaii of the State of Hawaii, including the agencies, departments, subdivisions, commissions and boards thereof.

Declarant: DHHL, and its successors and assigns, as Declarant hereunder.

Declaration: This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua, as the same may be amended.

Declaration of Annexation: This Declaration with respect to Village 3 described in Exhibit "B-1", the Village 4 Declaration of Annexation, this Declaration with respect to the annexation of Village 5 described in Exhibit "B-2", as set forth in Section 2.02 hereof, and all declarations of annexation and other documents formally annexing additional Property subject to this Declaration.

Developer: A Developer designated by Declarant to develop any Private Area into Residences or Lots. There may be more than one Developer, and Declarant may act as a Developer. Developer includes DHHL as the Developer of Village 3, Village 4 and Village 5.

DHHL: Department of Hawaiian Home Lands, and its successors and assigns.

DLNR: Department of Land and Natural Resources of the State of Hawaii, and its successors and assigns.

DOFAW: Division of Forestry and Wildlife of DLNR, and its successors and assigns.

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

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

Fill: Any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches.

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

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

Governing Documents: This Declaration, the Restrictions, the Articles of Incorporation, the By-Laws, the Modification Rules and Guidelines, the New Construction Design Handbook, the Rules, all rules and/or restrictions established by DHHL with respect to the Preserves, and all other rules and regulations adopted pursuant thereto.

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

HUD: The United States Department of Housing and Urban Development, and any successor agency authorized by the federal government to insure or guarantee loans secured by mortgages of residential real property.

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

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

Insured Mortgage: A mortgage of a Lot securing a loan insured or guaranteed by HUD.

Kanawai Enforcement Procedures: The Kanawai Enforcement Procedures adopted by the Hawaiian Homes Commission, and the rules promulgated thereunder, as the same may be amended.

Lease: The Lease executed by DHHL, as lessor, and a Lessee, as lessee, demising a Lot pursuant to the Act.

Lessee: One or more persons who are alone or collectively the record lessee of a Lot under a Lease from DHHL, excluding those having any such interest merely as security for the performance of an obligation. Persons who are not record lessees are excluded from this definition. Lessees are responsible to ensure that members of the Lessee's Family who reside within or occupy the Property and in the same household with such Lessee, and guests and invitees of such Lessee, observe and perform the provisions regarding use and occupancy set forth in the Governing Documents:

Lessee's Family: An individual or two or more persons related to a Lessee by blood, state sanctioned adoption, foster parentage, guardianship or marriage occupying or using a Lot.

Notwithstanding the foregoing,

(a) For the purposes of limitations, restrictions and Assessments set forth in Articles 5 and 8, Lessee shall not include the Declarant or any Developer with respect to any Lot owned by the Declarant; and

(b) Unless the context requires otherwise, the covenants of, and restrictions on, any Lessee are binding upon the Lessee's Family and the guests and invitees of any Lessee.

Lot: Within any Private Area, any Lot designated for residential use by Declarant or any residential unit within any type of project consisting of multiple residential units. Upon the subdivision, consolidation or development of any Lot, a Lot shall include each finished Lot or residential unit into which such Lots have been so subdivided, consolidated or developed.

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

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

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

Modification Rules and Guidelines: The rules and guidelines adopted by the Modifications Committee pursuant to Section 6.04.

New Construction Committee: The New Construction Committee created pursuant to Article 6 of this Declaration.

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

Notice: A notice delivered pursuant to Section 9.10.

Official Records: The official records of the Bureau of Conveyances of the State of Hawai'i, the Office of the Assistant Registrar of the Land Court of the State of Hawai'i, and/or the recording records established and maintained by DHHL.

Operating Fund: The fund created pursuant to Section 8.01.

Plant Preserve: The parcels of land, including easements and flowage areas, depicted as a Plant Preserve on the Preserve Map or described in a Declaration of Annexation to enclose and safeguard plants representing endangered species protected by State and Federal laws, determined by DHHL after consultation with USFWS and DOFAW. A Plant Preserve may be annexed to this Declaration and/or leased, licensed or otherwise delegated to the Association for the maintenance and management by the Association, together with all of the Improvements constructed on any such portion of the Property from time to time, which Plant Preserve shall not be considered a Lot or Common Area. Plant Preserves are classified into two types as follows:

(a) A Principal Plant Preserve encompasses several acres and typically encloses more than a single individual endangered plant specimen. Principal Plant Preserves are also intended as areas targeted for restoration of native dryland forest habitat. The Principal Plant Preserves are shown on the Preserve Map.

(b) A Mini-Plant Preserve encloses a single individual endangered plant specimen and is encircled by development; usually residential. Mini-Plant Preserves are typically less than or equal to an acre in size. The Mini-Plant Preserves are shown on the Preserve Map.

Plant Preserve License Agreement: A license agreement between the Plant Preserve Manager and the Declarant or the Association (if the maintenance and management of Plant Preserves are leased, licensed or delegated to the Association) for the administration, maintenance and management of the Plant Preserves.

Plant Preserve Manager: An entity, organization, or individual possessing specific botanical, horticultural and conservation resource management and conservation biology skills and knowledge, retained either by the Declarant or the Association (if the maintenance and management of Plant Preserves are leased, licensed or delegated to the Association) to administer, maintain and manage any or all of the Plant Preserves on the Property, including the endangered plants within, and all Improvements constructed on, or to support the function, maintenance, and management of the Plant Preserves.

Plant Preserve Plan: The "*Laiopua Plant Mitigation and Preserve Restoration Plan*" dated January 2008 prepared for DHHL by Leonard Bisel Associates, LLC and Geometrician Associates, as the same may be amended, containing and describing the methods, procedures and protocols to guide and control the development, restoration, maintenance and management of Plant Preserves, accepted by, and on file with, DOFAW and USFWS.

Preserve: "Preserve" shall mean an Archaeological Preserve or Plant Preserve and "Preserves" shall mean the Archaeological Preserves and Plant Preserves, collectively.

Preserve Map: The Preserve Map attached hereto as Exhibit "C" and made a part hereof, depicting the Archaeological Preserves, Plant Preserves, Principal Plant Preserves and Mini-Plant Preserves.

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

Property: The real property of approximately 1,000 acres in Kealahou, District of North Kona, County of Hawaii, State of Hawaii, where the urban planned community known as the Villages of La'i 'Ōpua will be developed, as shown on said Exhibit "A", together with such other real property annexed thereto from time to time pursuant to Sections 4.02, 4.03 and 4.07, but excluding such real property withdrawn pursuant to Section 4.05.

Record: With respect to any document, file plan or subdivision map, to record or file such document, file plan or subdivision map in the Official Records.

Recreational Facility: Any Improvement used for, or in connection with, any recreational purpose or activity, including without limitation, park, and playground facilities, riding stables and trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and craft centers and swimming pools.

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

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



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

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

Section 7 Agreement: The agreement dated May 17, 2007, entered into between DHHL and the USFWS pursuant to consultation under Section 7 of the Endangered Species Act of 1973, as amended, pertaining to the development of Villages 1, 2, 4 and 5, and the Plant Preserves, on file with DHHL and USFWS.

SHPD: State Historic Preservation Division of DLNR, and its successors and assigns.

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

State: The State of Hawaii, including the agencies, departments, subdivisions, corporations, boards and commissions thereof.

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

Subdivision Map: Any map or file plan showing a Subdivision recorded at the Bureau of Conveyances of the State of Hawaii or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

USFWS: United States Fish and Wildlife Service of the United States Department of the Interior, and its successors and assigns.

Village: Each separate phase of the development of Villages of La'i 'Ōpua as designated by Declarant. Each such Village shall be individually identified herein as Villages 1 through 7, 10 and 11, respectively.

Village 3: The first development consisting of the property described in Exhibit "B-1".

Village 4: The development consisting of the property described in the Village 4 Declaration of Annexation.

Village 5: The development consisting of the property described in Exhibit "B-2".

Villages of La'i 'Ōpua: The planned urban community to be developed on the Property as described in Sections 1.02 and 1.03, consisting of the initial development of Village 3, Village 4, Village 5 and future annexations, which may (but are not required to) include the master planned components as shown on said Exhibit "A", as such master plan and said Exhibit "A" may be revised and amended from time to time by the Declarant without the consent of the Lessees, Association or any other party.

Notwithstanding anything contained herein to the contrary, DHHL does not warrant or guarantee that any of the foregoing components, or any particular component or Village, will be developed within Villages of La'i 'Ōpua.

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

#### 4. PROPERTY SUBJECT TO RESTRICTIONS

##### 4.01 Villages of La'i 'Ōpua: Initial Development.

(a) The real property initially subject to the Restrictions shall be the portion of the Property described in Exhibit "B-1" (comprising Village 3), to which were annexed the property described in the Village 4 Declaration of Annexation, and the property described in Exhibit "B-2" (comprising Village 5) pursuant to Section 2.02, as the same shall be held, sold, conveyed, encumbered, leased, occupied, used and improved. The remaining portions of the Property may from time to time be annexed hereto pursuant to Sections 4.02, 4.03 and 4.07; provided, however, that Declarant shall not be obligated to annex any of the remaining portions of the Property. A general plan of Villages of La'i 'Ōpua which shows the proposed size, location and land use of various developments to be developed within the Property is attached hereto as Exhibit "A". The general plan also shows the proposed size and location of proposed Common Areas, which Common Areas are generally planned to serve the purposes of providing drainage and flowage areas, buffer zones, vehicular routes, rest areas and landscaped open spaces.

(b) The initial annexed area of Village 3, Village 4 and Village 5 shall be classified as a Private Area and Common Area, as set forth in Exhibits "B-1" and "B-2" as to Village 3 and Village 5, respectively, and as set forth in the Village 4 Declaration of Annexation with respect to Village 4.

##### 4.02 Annexation of Property to Villages of La'i 'Ōpua.

Declarant may annex portions of the Property to Villages of La'i 'Ōpua without the consent of the Lessees or the Association, upon satisfaction of the following requirements:

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

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

(1) Describes the portions of the Property to be annexed;

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

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

(4) Classifies such portions of the Property as Private Area, Common Area, Plant Preserve, Archaeological Preserve or other special use areas pursuant to Section 5.01;

(5) As to the annexation of land designated as Private Area, identifies the person (who need not be an Association Member) designated by DHHL to serve as the initial director of the Board for such annexed portions of the Property as an additional director of the Board or as a replacement for an existing director whose term automatically terminates upon such annexation pursuant to Section 7.10; and

(6) As to the annexation of land designated as Private Area, identifies the Developer of such portions of the Property.

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

#### 4.03 Annexation of Real Property to the Property.

Declarant may annex real property not within Villages of La'i 'Ōpua to the Property, thereby subjecting such real property to the Restrictions, without the consent of the Lessees or the Association, upon satisfaction of the following requirements:

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

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

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

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

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

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

(5) Identifies the person (who need not be an Association Member) designated by Declarant to serve as the initial director of the Board for such annexed property as an additional director of the Board or as a replacement for an existing director whose term automatically terminates upon such annexation pursuant to Section 7.10.

(6) Describes any conditions under which such real property shall become annexed to Villages of La'i 'Ōpua.

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

#### 4.04 Additional Restrictions Affecting Added Real Property.

Any provision in this Declaration to the contrary notwithstanding, Declarant by recording a declaration as provided in Sections 4.02, 4.03 or 4.07, may subject the real property added to the Property to such other covenants, conditions and restrictions as Declarant may deem appropriate, including without limitation:

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

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

#### 4.05 Withdrawal of Property From Villages of La'i 'Ōpua.

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

#### 4.06 Property Subject to Restrictions Limited.

(a) Except for the Property and the real property specifically annexed to the Property pursuant to this Article 4, no real property shall be deemed subject to the Restrictions, whether shown on any Subdivision Map recorded by DHHL or Declarant or described or referred to in any document executed or recorded by DHHL or Declarant. Nothing contained in this Declaration or in any Declaration of Annexation shall be deemed to be a representation or warranty that Declarant or DHHL will commit or subject to the Restrictions any real property Declarant or DHHL now owns or may hereafter acquire; and

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

#### 4.07 Annexation of Subsequent Developments.

Declarant and/or DHHL may, without the consent of the Association, Lessees or any other party, from time to time and in their respective sole discretion, annex to Villages of

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

(a) The annexation of such real property shall become effective and such real property shall become a part of Villages of La'i 'Ōpua when DHHL, Declarant or Association and the owner(s) of the real property to be annexed shall have recorded:

(1) A Declaration of Annexation which:

- (i) Describes the real property to be annexed to Villages of La'i 'Ōpua;
- (ii) Sets forth or refers to such additional or other covenants, conditions and restrictions applicable to such real property;
- (iii) Declares that such real property is held and shall be hold, sold, conveyed, encumbered, leased, occupied and improved subject to the Restrictions;
- (iv) Classifies such real property as Private Area, Common Area, Plant Preserve or Archaeological Preserve or other special use areas pursuant to Section 5.01; and
- (v) Describes any conditions under which such real property shall become annexed to Villages of La'i 'Ōpua.

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

(c) DHHL, Declarant or Association may impose an annexation fee to be paid in addition to the Initial Assessment in connection with any respective real property annexed by such party.

## 5. LAND CLASSIFICATIONS AND RESTRICTIONS

### 5.01 Land Classifications.

All the Property within Villages of La'i 'Ōpua shall be classified into one of the following areas: (a) Private Area; (b) Common Area; (c) Plant Preserve; (d) Archaeological

Preserve; and (e) other special use areas designated in Exhibit "A" or in a Declaration of Annexation. DHHL and/or Declarant may amend any of the foregoing classifications from time to time pursuant to Sections 9.01 and 9.05, without the consent of the Association or Lessees.

5.02 Private Area: Uses and Restrictions.

Each Lot in the Private Area shall be for the exclusive use and benefit of its Lessee, subject, however, to the Act, such Lessee's Lease, the Governing Documents, and the following covenants, conditions and restrictions:

(a) Only one Lessee's Family, including domestic servants and transient guests, shall occupy each Lot in the Private Area. Only one single-family Residence, which may include a guest room without a kitchen connected to the main dwelling, may be located on any Lot in a Private Area designated for single-family residential purposes. No second Residence may be constructed on any Lot designated for single-family residential use. The foregoing provision will not be enforced in any manner that will constitute a violation of the Act or any applicable statute, ordinance, rule, or regulation adopted by any governmental authority, including, but not limited to, the provisions of the Federal Fair Housing Act and Chapter 515, Hawaii Revised Statutes, as amended.

(b) No Lessee other than Declarant or Developer shall make any Improvement or perform other work which alters any Lot in any way from its natural state or improved state existing on the date such Lot was first leased by Declarant or Developer to the Lessee of such Lot, except in compliance with the provisions of Section 5.05. No Lessee of a Lot bordering on a Road shall alter any landscaping or fencing or wall visible from such Road without first obtaining the approval of the Modifications Committee.

(c) Each Lessee shall use such Lessee's Lot in the Private Area exclusively for residential purposes and shall not use any Lot or structure on a Lot for or in connection with the conduct of any trade or business. Nothing in this subsection (c) shall be deemed to prevent:

(1) The use of a Lot for personal business pursuits, including without limitation, artists, artisans, or craftsmen, so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming to or visiting the Lot or deliveries made to or picked up from the Lot; (d) the business activity does not involve the sale or offer for sale of any item to the public on the Lot; (e) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; (f) no vehicles, equipment, materials or other items relating to any business activity are parked or stored on the Lot or any Road within the Villages of La'i 'Ōpua; and (g) the business activity is consistent with the residential character of the Association and does not constitute a nuisance or hazardous or offensive use, as may be determined in the sole discretion of the Board; or

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

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

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

(e) Except to the extent maintained by the Association, each Lessee of a Lot will maintain in good repair any fence or wall along any Road boundary of such Lessee's Lot or within the Cotenancy Area, respectively, which had been erected by Declarant or Developer, and will also maintain any fence or wall erected by Declarant or Developer on the Lot or within two (2) feet of any common boundary between the Lot and any neighbor's Lot. Each Lessee with a fence or wall along such a common boundary shall be liable to the Lessee of the adjoining Lot for half the cost of maintenance or repair of such fence or wall incurred by such Lessee of the adjoining Lot, except to the extent such fence or wall is maintained by the Association.

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

(f) No Lessee shall subdivide or consolidate a Lot or Lots.

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

(h) No Lessee shall keep or maintain any animals on any Lot other than a reasonable number of generally recognized house pets for such Lessee's personal pleasure and not for sale or other commercial, rehabilitation, refuge or sanctuary purposes. No Lessee shall keep or maintain fowl or birds, other than caged songbirds on any Lot. No Lessee shall keep or maintain animals or birds which are a nuisance to neighbors, or which make noise or sounds in violation of the Rules.

(i) No Lessee shall erect any sign upon any Lot, including without limitation, commercial, political or similar signs, Visible from a Road except:

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

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

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

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

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

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

(j) No Lessee shall keep, place or maintain any house trailer, mobile home, permanent tent or similar facility or structure upon any Lot or any Road within the Villages of La'i 'Ōpua at any time. This paragraph shall not prevent a Lessee from maintaining temporary construction shelters for a period not to exceed one year to be used exclusively in connection with the construction of any work or Improvement permitted in Section 5.05.

(k) No Lessee shall keep, place or maintain any truck or other vehicle or equipment of more than one (1) ton capacity upon any Lot in such a manner that such truck or other vehicle or equipment is Visible from a Road or upon any other Road within the Villages of La'i 'Ōpua. This paragraph shall not prevent a Lessee from maintaining construction equipment for a period not to exceed six (6) months to be used exclusively in connection with the construction of any work or Improvement permitted by Section 5.05.

(l) No Lessee shall construct, place or maintain any accessory structures or buildings upon any Lot prior to the construction of the main structure of the Residence. This paragraph shall not prevent a Lessee from maintaining temporary construction shelters for a period not to exceed six (6) months to be used exclusively in connection with the construction of any work or Improvement permitted in Section 5.05.

(m) No Lessee shall construct, reconstruct or repair any trailer, vehicle, equipment or boat upon any Lot in such a manner that such construction, reconstruction or repair is Visible from a Road nor shall a Lessee maintain any vehicle or equipment not in good operating condition upon any Lot so as to be Visible from a Road. This paragraph shall not prevent a Lessee from performing maintenance work and minor repairs on such Lessee's own trailer, vehicle, equipment or boat in such Lessee's Garage. Without limiting any other remedy set forth in this Declaration, the Association shall have the right to enter any Lot to remove any trailer, vehicle, equipment or boat being constructed, reconstructed or repaired in violation of this Section to a public dump, a repair shop, or a storage yard. The Lessee of the Lot shall be responsible for all costs involved, whether or not such Lessee is the owner of the removed trailer, vehicle, equipment or boat, and shall pay to the Association all costs incurred. Neither the Association nor its agents shall be liable for trespass, for invasion of privacy, or for conversion or any damages for the removal of such trailer, vehicle, equipment or boat.

(n) No Lessee shall keep garbage or trash on any Lot so as to be Visible from a Road, except in closed receptacles placed for garbage or trash removal or except as otherwise screened from view from the adjoining Road, and no accumulated waste plant materials will be



permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be Visible from a Road.

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

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

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

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

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

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

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

(v) No Lessee shall construct any building, structure or other Improvement within any easement, lease or license area located within a Lot, or between the Road boundary of the Lot and any applicable building setback line along such boundary. However, a Lessee may construct walks, fences, walls, driveways and garbage receptacle enclosures within such setback area, but not within any easement, lease or license area, if not otherwise in violation of any other restriction contained in this Declaration or in the New Construction Design Handbook or the Modifications Rules and Guidelines, and if in compliance with the land use and zoning

designated by DHHL for such Lot, as may be modified by variances that may be approved by the County, the State or DHHL.

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

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

(y) No Lessee shall install metal siding on a Residence, and no Lessee may install liquid petroleum gas tanks on any Lot which are Visible from a Road.

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

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

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

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

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

(ee) If due to the peculiar location, size or topography of a particular Lot, a Lessee cannot reasonably build a Residence without violating a specific provision of this Section 5.02, the Board shall have the authority, with the prior written approval of the Committee, to grant a variance from such specific restriction permitting such Lessee to proceed to build and occupy a Residence without regard to the specific restriction, provided that such Residence is constructed to be in full compliance with the land use and zoning designated by DHHL for such Lot, as may be modified by variances that may be approved by the County, the State or DHHL, as well as the Lease and the Act.

(ff) No Lessee may undertake any activity, or construct any building, structure or any other Improvement, upon or in any Lot that results in a conflict within or violation of the Governing Documents, such Lessee's Lease or the Act.

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

(hh) The terms of this Section 5.02 shall not apply to DHHL, Declarant and Developer to the extent necessary to permit construction of or modifications to a Residence or a Lot pursuant to plans approved by Declarant.

5.03 Private Area and Common Area Adjacent to and Bordering Principal Plant Preserves: Uses and Restrictions.

Brush fires pose a significant threat to the Principal Plant Preserves, and the endangered plants protected under Federal and State endangered species laws within them. Therefore, the minimizing of factors that might contribute to, or start, an accidental blaze is of extreme importance to the Declarant. Consequently, the use and benefit of each Lot in the Private Area, and all portions of the Common Area, that are adjacent to, and bordering, a Principal Plant Preserve shall be subject to each Lessee's Lease, the Governing Documents, the Act, the Hawaiian Homes Commission and its policies, the conditions described under preceding Section 5.02, and the following additional covenants, conditions and restrictions:

(a) The use and ignition of fireworks in any Common Area, or any rear or side yard of a Lot, bordering a Principal Plant Preserve are expressly prohibited.

(b) Without exception, no exterior fires, including barbecue fires, fires for cooking, smoking, decorative, or otherwise, shall be permitted, started, ignited or fed in any Lot, or in the Common Area, within twenty (20) feet of the boundary of a Principal Plant Preserve.

(c) Without exception, no Lessee or the Association shall keep garbage, trash, accumulated waste plant materials, and compost piles, within twenty (20) feet of any Principal Plant Preserve boundary.

(d) No Lessee or the Association shall construct any structure or building, kennel, enclosure, shed, or otherwise, either permanent or temporary, other than boundary fences or walls, within ten (10) feet of any Plant Preserve boundary.

(e) Lessees and other persons living, or using the Common Area, adjacent to any Principal Plant Preserve are not granted access across the Plant Preserve boundary. Crossing gates or openings in fence-lines along the Plant Preserve boundary, which provide access into any Plant Preserve, are prohibited and shall constitute trespassing.

(f) No Lessee or other persons living, or using the Common Area, adjacent to any Principal Plant Preserve nor the Association shall place fill material or otherwise change the elevation at the base of the barrier walls of such Principal Plant Preserve. Such preserve barrier walls are designed and installed to have 2'-0" of exposed wall and 2'-0" of fence along the top and are not engineered to be earth retaining structures. Any Lessee or other person, or the Association, found to have installed fill material up against a preserve barrier wall shall be subject to having said material removed, and the wall repaired to its condition as existed prior to placement of the fill or better to if necessary to fulfill its original intended purpose, at the expense of such Lessee, person or the Association.

(g) The contents of any swimming, hydroponic, aquaponic or aquaculture, or fish or aquatic species pools or tanks, hot tubs or whirlpools, or other types of tanks, basins, tubs or reservoirs, shall not be discharged or drained into a Plant Preserve.

(h) No flush or direct wash-down or rinse water from any animal enclosure, or wash or rinse water from cooking, washing or cleaning facilities or appliances, shall be drained, discharged, or allowed into a Plant Preserve.

(i) Endemic, indigenous, or pre-Western contract, dryland plant species currently or historically found in Kona should be given preference as landscaping options for Lots and Common Area bordering any Plant Preserve to compliment the native habitat of the adjoining Plant Preserve and minimize the amount of non-native species that might migrate into and invade or re-invade the Plant Preserve.

(j) Other than Polynesian-introduced species, non-native plant species are discouraged from being used to landscape the Common Area and the rear yards of Lots bordering any Plant Preserve.

#### 5.04 Private Area and the Common Area adjacent to and bordering Mini-Plant Preserves: Uses and Restrictions.

Mini-Plant Preserves, or “Mini Preserves”, enclose individual plant specimens protected under Federal and State endangered species laws. Destroying or harming them, whether intentionally or accidentally, could result in penalties to the Declarant, the Association and the individual inflicting the damage or harm. Therefore, the minimizing of factors that might contribute to, or cause, harm to the enclosed plant specimens is of extreme importance to the Declarant. Consequently, the use and benefit of the Common Area and each Lot in the Private Area that are adjacent to, and bordering, a Mini-Plant Preserve, shall be subject to each Lessee's Lease, the Governing Documents, the Act, the Hawaiian Homes Commission and its policies (including but not limited to Title 10 of the Hawaii Administrative Rules), the conditions described under preceding Section 5.02, and the following additional covenants, conditions and restrictions:

(a) The use and ignition of fireworks in the Common Area, or any rear or side yard of a Lot, bordering a Mini-Plant Preserve are expressly prohibited.

(b) Without exception, no exterior fires, including barbecue fires, fires for cooking, smoking, decorative, or otherwise, shall be permitted, started, ignited or fed in any Lot, or in any Common Area within ten (10) feet of the boundary of a Mini-Plant Preserve.

(c) Lessees and other persons living, or using the Common Area, adjacent to any Mini-Preserve are not granted access across the Plant Preserve boundary. Crossing gates or openings in fence-lines along the Mini Preserve boundary, which provide access into any Plant Preserve, are prohibited and shall constitute trespassing.

(d) No Lessee or other person living, or using the Common Area, adjacent to any Mini-Preserve, nor the Association, shall place fill material or otherwise change the elevation at the base of the barrier walls of such Mini-Plant Preserve. Such preserve barrier walls are

designed and installed to have 2'-0" of exposed wall and 2'-0" of fence along the top and are not engineered to be earth retaining structures. Any Lessee or other person, or the Association, found to have installed fill material up against a preserve barrier wall shall be subject to having said material removed, and the wall repaired to its condition as existed prior to placement of the fill or better if necessary to fulfill its original intended purpose, at the expense of such Lessee, person or the Association.

(e) The contents of any swimming, hydroponic, aquaponic or aquaculture, or fish or aquatic species pools or tanks, hot tubs or whirlpools, or other types of tanks, basins, tubs or reservoirs, shall not be discharged or drained into a Plant Preserve.

(f) No flush or direct wash-down or rinse water from any animal enclosure, or wash or rinse water from cooking, washing or cleaning facilities or appliances, shall be drained, discharged or allowed into a Plant Preserve.

#### 5.05 Private Area; Construction and Alteration of Improvements; Excavations.

No Lessee may construct, reconstruct, refinish, alter or maintain any Improvement upon, under or above any Lot of a Private Area or may make or create any Excavation or Fill thereon, or may make any change in the natural or existing surface drainage thereof, or may install any utility line (wire or conduit) thereon, except in compliance, as the case may be, with the New Construction Design Handbook and the Modifications Rules and Guidelines, as may be amended from time to time, the land use and zoning designated by DHHL for such Lot, or Village where such Lot is located, as modified by variances that may be approved by the County, the State or DHHL, and all provisions of this Section:

(a) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such Improvement for which the Lessee has obtained approval from the appropriate Committee pursuant to this Section 5.05:

(1) No Lessee shall conduct any Excavation or Fill which would be Visible from a Road; and

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

(b) Any Lessee proposing to construct, reconstruct, refinish or alter any part of the exterior of any Improvement or to perform any other work which requires prior written approval of the Committee shall apply to the appropriate Committee for approval in accordance with the New Construction Design Handbook or the Modifications Rules and Guidelines, and the land use and zoning designated by DHHL for such Owner's Lot, or Village where such Lot is located, as modified by variances that may be approved by the County, the State or DHHL.

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

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

(e) The Committee shall have no power to vary any of the standards and restrictions set forth in the Restrictions, except as may be permitted herein or authorized by the Declarant and DHHL. The Declarant, DHHL and Association shall have the right to commence and pursue any remedy provided in the Restrictions for any violation by a Lessee of the Restrictions, whether or not the Committee shall have approved plans and specifications.

(f) In reviewing plans and specifications, the Committee shall consider whether the proposed Improvement complies with the restrictions stated in Article 5 and whether the proposed Improvement:

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

(2) Conforms to the New Construction Design Handbook and/or Modifications Rules and Guidelines and general plan of Villages of La'i 'Ōpua;

(3) Complies with the land use and zoning designated by DHHL for such Owner's Lot, or Village where such Lot is located, as modified by variances that may be approved by the County, the State or DHHL;

(4) Constitutes a suitable and adequate development of the Lot;

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

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

#### 5.06 Common Area; Uses; Restrictions.

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

(a) Use of the Common Area shall be subject to the Act, Leases and Governing Documents; and

(b) Use of the Common Area shall be subject to the rights of DHHL as the fee simple owner of the Property and to such easements, rights and rights-of-way then existing or reserved by DHHL, Declarant or a Developer with Declarant's consent, at the time of transfer to the Association, to such Road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other Road and public utility leases, licenses and easements as may from time to time be granted or conveyed by DHHL, Declarant or a Developer, the right to make such leases, licenses and grants of easement being expressly reserved to DHHL, Declarant and to a Developer to whom DHHL or Declarant has expressly delegated such right.

(c) No Improvements, Excavation or other work which in any way alters any Common Area from its natural state or existing state on the date when such Common Area was licensed to the Association, shall be done except in strict compliance with provisions of this Section 5.06.

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above, Sections 5.07 and 9.05 below, the Common Area shall be exclusively devoted to natural recreational uses which do not damage the Common Area or the vegetation therein, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Lessees in their enjoyment of the Private Areas, or in their enjoyment of the Common Areas. Nothing herein is intended to prohibit recreational play (e.g., soccer, baseball, etc.) which would, by the very nature of the play, cause some damage to the vegetation and some increase in the cost of maintenance. The Board of Directors shall have the authority to regulate the type of recreational play permitted on the Common Areas. The following restrictions shall apply:

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

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

(3) Without exception, all fires are prohibited in Common Areas within 20 feet of any Plant Preserve boundary.

(4) No animals shall be permitted on Common Areas, except generally recognized house pets under the control of their owners in accordance with the Rules.

(e) The right to use and enjoy the Common Areas shall extend to Lessees and the Lessee's Family and their guests and invitees.

(f) Declarant may reserve certain Common Areas within Villages of La'i 'Ōpua for the development and operation of private Recreational Facilities, the use of which require

payment of Assessments or other fees. Any such private Recreational Facility may be owned, operated or managed by the Association or a private party.

**5.07 Common Area: Construction and Alteration of Improvements.**

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

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

(b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Common Area, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of six (6) feet or a trunk measuring six (6) inches or more in diameter at ground level from any Common Area to the appropriate Committee for approval in such form and containing such information as the Committee may from time to time require. The Committee shall approve the plans and specifications upon satisfaction of the following conditions;

(1) Any plans to construct any new Improvements, or to alter the exterior appearance of any existing Improvement upon any Common Area shall comply with the standards set forth in Sections 5.02 and 5.05, which standards will also apply to Common Areas, and that the design of such Improvements is in harmony with other Improvements and the overall appearance of Villages of La'i 'Ōpua;

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

(3) If such plans are approved by the Committee, the Association shall then be required to obtain the approval of Declarant of such plans.

(c) The provisions of this Section 5.07 to the contrary notwithstanding, no approval by the Committee shall be required for any construction or modification done by or for DHHL, Declarant or any Developer, including without limitation any construction or modification of Recreational Facilities by DHHL, Declarant or any Developer and any work done by DHHL, Declarant or any Developer, their respective representatives, agents, employees



or contractors in connection with the construction or modification of subdivision Improvements or in connection with the construction or modifications of any roadways, signage or landscaping or any electrical, cable, television, communication, water, sewer or other utilities.

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

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

(2) Construct, reconstruct, replace or refinish any roadway improvement upon any portion of the Common Area designated on a Subdivision Map as a Road;

(3) Replace any destroyed trees or any other vegetation in a Common Area, or plant trees, shrubs and ground cover, and install appropriate irrigation system; and

(4) Place and maintain upon any Common Area such signs as the Association may deem necessary for the identification of Villages of La'i 'Ōpua and of Roads for the regulation of traffic, parking and use of the Common Area and for the health, safety and general welfare of Lessees and the public, provided that the design of any such signs first shall be approved by the Committee.

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

#### 5.08 Cotenancy Areas: Uses and Restrictions: Construction and Alteration of Improvements.

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

(a) DHHL, Declarant and the Association, or their respective duly authorized agents, shall have the rights set forth herein with respect to each Cotenancy Area.

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

(1) No Lessee will undertake any such Improvement or work without the written consent of the other Lessees of the Cotenancy Area and Declarant.

(2) Any Improvement to or other work to be done on a Cotenancy Area, other than construction by DHHL, Declarant or a Developer, shall require approval of the Committee

and DHHL, the standard for approval being the standard required for any Improvement or other work on a Lot to which an undivided interest in a Cotenancy Area is appurtenant.

(3) DHHL and Declarant shall not be required to obtain the consent of the Lessees, the Association or any Committee prior to making any Improvements in a Cotenancy Area.

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

(d) All Lessees of undivided interests in Cotenancy Areas, and if so provided in an appropriate Declaration of Annexation, the Association, shall be responsible for maintaining their Cotenancy Area and all landscaping planted on such Cotenancy Area in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to any part of Villages of La'i 'Ōpua. The Association may assess each Lessee of an interest in a Cotenancy Area a proportionate share of any expenses incurred by such Association in so maintaining the Cotenancy Area.

(e) A Lessee shall neither transfer or assign an undivided interest in a Cotenancy Area separately from the Lot to which the undivided interest in the Cotenancy Area is appurtenant nor transfer the Lot to which the undivided interest in the Cotenancy Area is appurtenant without also transferring the undivided interest in the Cotenancy Area; provided, however, that all of the Lessees of the Cotenancy Area may jointly transfer the Cotenancy Area to the State of Hawaii or County of Hawaii for public purposes, or to the Association to be held as a Common Area if the Association is willing to accept the dedication. Upon acceptance of such transfer by the State of Hawaii or County of Hawaii, or by the Association, the Cotenancy Area so transferred shall become a Common Area.

#### 5.09 Archaeological Preserve; Uses; Restrictions.

Any or all of the Archaeological Preserves may be annexed by DHHL pursuant to Article 4, classified as Common Area and/or leased, designated or licensed to the Association to manage and maintain, subject to the provisions hereof. Notwithstanding whether the Archaeological Preserves are so annexed, classified, designated, leased or licensed, Lessees may use Archaeological Preserves only to the extent granted by DHHL, which use shall be subject, however, to any rules and restrictions established and modified by DHHL and the following restrictions:

(a) Use of an Archaeological Preserve shall be subject to the Act, Leases and the Governing Documents.

(b) Uses of, and activities in, an Archaeological Preserve shall also comply with those permitted by DHHL and shall be in accordance with the following;

(1) Each "*Archaeological Preservation Plan*", "*Burial Treatment Plan*", and other archaeological mitigation plan, prepared for the subject Archaeological Preserve and

approved by SHPD or accepted by the Burial Council, or amendments under subsequent archaeological mitigation reports prepared for the subject Archaeological Preserve and approved by SHPD or accepted by the Burial Council;

(2) The Native American Graves Protection and Repatriation Act ("NAGPRA") and State of Hawaii Historic Preservation laws;

(3) Any and all agreements entered into as a result of a consultation under Section 106, Hawaii Revised Statutes ("HRS"), with SHPD for the subject Archaeological Preserve; and

(4) Those approved by SHPD.

(c) Use of an Archaeological Preserve shall be subject to the rights of DHHL as the fee simple owner of the Property and to such easements, rights and rights-of-way then existing or reserved by DHHL or a Developer with DHHL consent, at the time of annexation or lease, license or delegation to the Association, to such Road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other Road and public utility leases, licenses and easements as may from time to time be granted or conveyed by DHHL, or a Developer acting on behalf of DHHL, the right to make such leases, licenses and grants of easement being expressly reserved to DHHL and to a Developer to whom DHHL has expressly delegated such right.

(d) No Improvements, Excavation or other work which in any way alters any Archaeological Preserve from its natural state or existing state on the date when such Archaeological Preserve was licensed to the Association, shall be done except in strict compliance with provisions of:

(1) This Section 5.09;

(2) Those established by DHHL, and/or in accordance with one or more of the following:

(i) Each "*Archaeological Preservation Plan*", "*Burial Treatment Plan*", and other archaeological mitigation plan, prepared for the subject Archaeological Preserve and approved by SHPD or accepted by the Burial Council, or amendments under subsequent archaeological mitigation reports prepared for the subject Archaeological Preserve and approved by SHPD or accepted by the Burial Council;

(ii) NAGPRA and State of Hawaii Historic Preservation laws,

(iii) Any agreements entered into as a result of a consultation under HRS Section 106 with SHPD for the subject Archaeological Preserve, and

(iv) Those approved by SHPD.

(e) Except to the extent otherwise expressly permitted pursuant to the provisions of this Declaration, the Archaeological Preserves shall be exclusively devoted to passive

recreational uses which do not damage the Archaeological Preserves or the features therein (such as stone walls, cairns, terraces, trails, or other structures and native vegetation), increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Lessees in their enjoyment of the adjoining Private Areas and Common Area, or in their enjoyment of the Archaeological Preserves. Recreational play (e.g., soccer, baseball, etc.) which would, by the very nature of the play, potentially irreparably damage the archaeological features, and/or native vegetation and result in some increase in the cost of maintenance, are prohibited. All use of the Archaeological Preserves by each Lessee and such Lessee's Family, guests, invitees and all other parties shall be subject to their compliance with any and all rules established and modified by DHHL for the Archaeological Preserves, including the type, hours, and magnitude of passive recreational use permitted in the Archaeological Preserves. The following restrictions shall also apply:

- (1) There shall be no camping in an Archaeological Preserves.
- (2) No fires shall be started in an Archaeological Preserves, except fires in enclosed cooking facilities, or fixed barbeque sites in picnic areas, within Recreational Facilities developed by the Association in an Archaeological Preserve which have been approved by DHHL.
- (3) No animals shall be permitted in Archaeological Preserves, except generally recognized house pets under the control of their owners.
- (f) The right to use and enjoy an Archaeological Preserve shall be, subject to all limitations or restrictions imposed (i) by DHHL, (ii) under any "*Archaeological Preservation Plan*" or "*Burial Treatment Plan*" or other archaeological mitigation report, if prepared for the Archaeological Preserve and approved by SHPD or accepted by the Burial Council, (iii) by NAGPRA and State of Hawaii Historic Preservation laws, (iv) by any agreement resulting from a consultation under HRS Section 106 with SHPD, and (v) by any rules and regulations as adopted by DHHL, which limitations and restrictions shall extend to Lessees and the Lessee's Family, guests and invitees.

#### 5.10 Archaeological Preserve: Construction and Alteration of Improvements.

If any Archaeological Preserve is classified as Common Area, or leased, licensed or delegated to the Association, no Improvements, Excavation or other work which alters any such Archaeological Preserve from its natural or improved state on the date when such Archaeological Preserve was so classified as Common Area or leased, licensed or delegated to the Association, shall be done by the Association, except in compliance with the conditions of Section 5.09(d) and the following provisions:

- (a) No person other than DHHL, Declarant or a Developer, the Association, Governmental Agency, or Plant Preserve Manager, and their respective contractors and employees, acting with the approval, or on behalf, of DHHL, shall improve, excavate, construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon, any Archaeological Preserve.

(b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Archaeological Preserve, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of existing trees or shrubs that may have root systems beneath or within any significant archaeological feature earmarked for preservation, or burials, and whose removal might compromise or damage said archaeological features or burials, or native plants, from any Archaeological Preserve to DHHL, or the appropriate Committee upon consent or direction from DHHL, for approval in such form and containing such information as DHHL or the Committee may from time to time require. DHHL and/or the Committee shall approve the plans and specifications upon satisfaction of the following conditions:

(1) Any plans to construct any new Improvements, or to alter the exterior appearance of any existing Improvement upon any Archaeological Preserve shall comply with the standards set forth in Section 5.07, which standards will also apply to Archaeological Preserves, and that the design of such Improvements is in harmony with other Improvements and the overall appearance of Villages of La'i 'Ōpua;

(2) Any plans to construct any new Improvements in, or to alter the exterior appearance of any existing Improvement upon, any Archaeological Preserve shall comply with any "*Archaeological Preservation Plan*" or "*Burial Treatment Plan*" or other archaeological mitigation report, if prepared for the Archaeological Preserve and processed for approval by SHPD or acceptance by the Burial Council, and shall not violate any provisions of NAGPRA, the State of Hawaii Historic Preservation laws, and any agreement resulting from any consultation under HRS Section 106 with SHPD, or subsequent approval from SHPD;

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

(4) If such plans are approved by the Committee, the Association shall then be required to obtain the approval of DHHL of such plans.

(c) The provisions of this Section 5.10 to the contrary notwithstanding, no approval by the Committee shall be required for any construction or modification done by or for DHHL, Declarant or any Developer or Plant Preserve Manager authorized by DHHL, including without limitation any construction or modification of Recreational Facilities by DHHL, Declarant or any Developer or Plant Preserve Manager and any work done by DHHL, Declarant or any Developer or Plant Preserve Manager, their respective representatives, agents, employees or contractors in connection with the construction or modification of subdivision Improvements

or in connection with the construction or modifications of any roadways, signage or landscaping or any electrical, cable, television, communication, water, sewer or other utilities.

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

(1) Reconstruct, replace, refinish any Improvement upon a Archaeological Preserve in accordance with plans previously approved by the Committee, or if such Improvement existed upon the Archaeological Preserve when such Archaeological Preserve was annexed, leased, licensed or delegated to the Association, then in accordance with the original design, and the original or a higher standard of construction of such Improvement;

(2) Replace any destroyed native trees or any other native vegetation in a Archaeological Preserve, or plant trees, shrubs and ground cover, and replace damaged, or install new, irrigation systems to support replacement native vegetation, in compliance with conditions described in any "*Archaeological Preservation Plan*", "*Burial Treatment Plan*", or other archaeological mitigation plan, if prepared for the Archaeological Preserve and processed for approval from SHPD or acceptance by the Burial Council, and not in violation of the provisions of NAGPRA, State of Hawaii Historic Preservation laws, any agreement resulting from any consultation under HRS Section 106, with SHPD, or conditions previously imposed on the particular Archaeological Preserve by DHHL; and

(3) Place and maintain upon any Archaeological Preserve such signs as the Association may deem necessary for education, protection, security, or the regulation of traffic, parking and use of, the Archaeological Preserve and for the health, safety and general welfare of Lessees and the public, provided that the design of any such signs first shall be approved by the Committee.

#### 5.11 Annexation of Plant Preserves.

Plant Preserves are located within the Property, as required by the United States Fish and Wildlife Service of the Department of Interior for the preservation of certain endangered and proposed plant species. These areas must be preserved and managed to perpetuate dry forest habitat and populations of the endangered plants found within the Property. Management activities include, but are not limited to, the control of alien plants and animals, the control of fire, and the promotion of endangered and/or endemic and indigenous plant populations.

Any or all of the Plant Preserves, being either Principal Plant Preserves or the Mini-Plant Preserves, may be annexed by DHHL pursuant to Article 4 and/or leased, delegated or licensed to the Association to manage and maintain, subject to the following requirements in addition to those described in Article 4 above:

(a) Lessees and the Association shall have no rights whatsoever in such Plant Preserves, except as described below, and shall not enter into, dump into, or otherwise disturb such Plant Preserves, except as described below, or impede entry by parties authorized by the DHHL into such Plant Preserves.

(b) The Association and Lessees agree that all uses of, and activities in, Plant Preserves shall be limited to those described in the Plant Preserve Plan, or subsequent

amendments approved by DOFAW, USFWS, and DHHL, the Section 7 Agreement, or subsequent agreements resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to that particular Plant Preserve.

(c) Purpose and Intention of Plant Preserves: The Association and Lessees hereby agree that the purpose and intention of the Plant Preserves, as described in the Plant Preserve Plan, are to perpetuate dry forest plant enclaves that will:

(1) Safeguard and preserve wild specimens in areas that enable out-planting and nurturing of new individuals of endangered plants, including but not limited to *aupaka*, *uhiuhi*, *aiea*, *kauila*, and *halapepe*, and species of concern, including without limitation, *ohe makai*, *maiapilo* and *kookoolau*; and

(2) Safeguard, preserve and enhance portions of the Plant Preserves that currently support a relatively instance unique dry forest appropriate to the ahupuaa of Kealakehe; and

(3) Transform areas highly disturbed from a pre-Western contact biological reference into a landscape of both common and rare native plants that can promote supervised or controlled cultural uses and education; and

(4) Provide a site or sites to view, care for, and allow for education and traditional use of native plants, as consistent with conservation goals; and

(5) Include the adoption of Plant Preserve management strategies that are goal-directed and driven by information from an appropriate monitoring system.

(d) Management Objectives of Plant Preserves: The Plant Preserves shall be managed and maintained by DHHL or the Association to the extent leased, licensed or delegated to the Association and used in accordance with the following management objectives as described in the Plant Preserve Plan:

(1) Plant Preserves are to be managed in four general zones: Zone 1 (existing endangered species protection zones), Zone 2 (semi-intact native vegetation restoration zones), Zone 3 (disturbed zones planted with native species), and Zone 4 (support zones), utilizing a geographic information system database, described as follows:

a. Zone 1: Areas earmarked for the protection of, and that contain or enclose, existing endangered species, for which access is limited to DHHL, the Plant Preserve Manager approved by DHHL, and consultants and contractors retained or designated by DHHL or directly by the Plant Preserve Manager, and persons expressly authorized by DHHL; and

b. Zone 2: Areas consisting of, containing, or that contained, existing semi-intact native dryland forest areas, intended for restoration with native vegetation to an original pre-Western contact state, for which access is limited to DHHL, the Plant Preserve Manager approved by DHHL, consultants and contractors retained or designated by DHHL or directly by the said Plant Preserve Manager, persons expressly authorized by DHHL, and others under the direct oversight and supervision of the Plant Preserve Manager; and

c. Zone 3: Areas disturbed from their original native state also intended to be planted with native vegetation, including Polynesian introductions; and

d. Zone 4: Areas intended to support activities in the Plant Preserves, generally areas not intended for planting or restoration; and

(2) Improvements and features are to be built, and activities undertaken, that protect the Plant Preserves from further intrusion and disturbance; and

(3) Individual endangered wild *aupaka* and *uhiuhi* plants shall continue to be protected from harm and their seeds shall be collected and propagated to safeguard these species from extinction in the wild; and

(4) Rare and uncommon native Hawaiian plants shall be protected and their populations increased in Zones 1, 2 and 3; and

(5) Restoration of a historical pre-Western contact dry forest habitat within Zone 2 shall be attempted and pursued; and

(6) There shall be a focus on promoting micro-environments and macro-environments that benefit dry-forest restoration; and

(7) Existing and future invasive species shall be addressed pro-actively through aggressive management; and

(8) A clear focus that the Plant Preserves are intended as sites for dry-forest species native to the particular area – and not intended as general purpose botanical gardens for native or Polynesian plant – shall be maintained and new plantings shall be consistent with dry forest restoration, with the condition that certain Zone 3 areas may be made available, with DHHL approval, for education, community outreach, site stewardship and cultural purposes, with controlled public access during regulated operating hours; and

(9) Infrastructure that includes vehicular barriers (walls) and personnel and ungulate barriers (fences) with appropriate gates, access roads, service trails, irrigation systems and facilities, planting sheds, shelters or staging areas for volunteers and classes, controlled public/community access sites, and educational and regulatory signage shall be constructed, maintained, and repaired as needed, along with the implementation of a systematic inspection, maintenance and repair program, with the focus that the construction, maintenance and repair of such infrastructure shall be for the protection of endangered species; and

(10) The Plant Preserves are to be managed not in isolation, but with input from, and collaboration and participation with, outside local stakeholders that may have an interest in the Plant Preserves, and public and community cooperation, support and participation actively encouraged and solicited, and though the mission of these Plant Preserves is expected to remain constant, management strategies may evolve and additional functions may be added as new information, technology or methods become available or unforeseen conditions reveal themselves; and



(11) The principles of adaptive management shall be utilized and an effective monitoring system to determine if management goals are being reached shall be developed, with input from, and collaboration and participation with, outside academics and entities engaged in similar resource conservation, management, and research efforts elsewhere, and adjusted as necessary.

(e) All Plant Preserves shall be subject to such additional rules and restrictions as shall be imposed by Declarant or DHHL, without the consent of the Lessees or the Association.

#### 5.12 Plant Preserve; Uses; Restrictions.

Limited and restricted use of designated portions of selected Plant Preserves identified by DHHL, as described below, may be (but shall not be required to be) granted by DHHL equally to all Lessees, except as specifically provided herein. Every Lessee may have a limited and restricted ability to use such designated portions of selected Plant Preserves to the extent granted and determined by DHHL, which ability shall be subject to such rules and restrictions established and modified by DHHL, and the following restrictions:

(a) Uses of, and activities in, Plant Preserves shall be limited to those described in the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, the Section 7 Agreement, or subsequent agreements resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve. The following restrictions shall also apply:

- (1) There shall be no camping in a Plant Preserve.
- (2) Smoking is not permitted in any Plant Preserve.
- (3) No fires shall be started, ignited or fed, or permitted in a Plant Preserve.
- (4) No animals shall be permitted in Plant Preserves, except generally recognized house pets under the control of their owners and only in areas designated by DHHL.

(b) Use of a Plant Preserve shall be subject to the rights of DHHL as the fee simple owner of the Property and to such easements, rights and rights-of-way then existing or reserved by DHHL, or a Developer with DHHL's consent, to such Road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other Road and public utility leases, licenses and easements as may from time to time be granted or conveyed by DHHL, or a Developer acting on behalf of DHHL, the right to make such leases, licenses and grants of easement being expressly reserved to DHHL and to a Developer to whom DHHL has expressly delegated such right.

(c) Plant Preserve Manager. DHHL, or if delegated to it by DHHL, the Association, shall designate and hire a Plant Preserve Manager who shall oversee, coordinate, and supervise all activities within, affecting and impacting, or related to use, management, and maintenance of any Plant Preserve. The Plant Manager may be employed from outside, or be a member or members of the Association, but in all cases, the Plant Preserve Manager to be

designated by the Association shall be approved by DHHL and shall be an entity, firm, group, organization or individual possessing all of the following minimum qualifications:

- (1) The principal member of the group or organization actively involved with, and primarily responsible for, the Plant Preserves shall have at least three (3) years of experience in restoration and/or conservation biology in the State of Hawaii; and
- (2) Possess experience in the development and/or management of native Hawaiian habitats or native Hawaiian habitat preserves, in the State of Hawaii and/or specific experience in native Hawaiian dryland forest restoration, development and/or management for a minimum period of three (3) years; and
- (3) Possess, and be able to provide evidence demonstrating, horticultural experience and expertise with endemic, indigenous, or pre-Western contract, dryland species currently or historically found in Kona; and
- (4) Possess, and be able to provide evidence of, experience with supervising staff, skilled and non-skilled field personnel, volunteers and volunteer groups, and a history of satisfactory and agreeable interaction and interfacing with public and community groups and organizations who will be visiting and using the Plant Preserves for educational and cultural purposes; and
- (5) Possess all licenses and permits necessary, and required by State and Federal regulatory agencies that have jurisdiction of endangered plant species, such as DOFAW and USFWS, including but not limited to a "takings" permit, as a prerequisite for working on, around, collecting and handling endangered plant species; and
- (6) Agree to allow supervised access to, and to cooperate with, academics interested in researching and studying the botanical resources and opportunities that the Plant Preserves contain and represent and who have obtained prior approval from DHHL; and
- (7) Be able to indemnify the State for damages resulting from work and activities in or related to the Plant Preserves; and
- (8) Other additional qualifications or requirements as shall be imposed by DHHL without the consent of the Lessees or the Association.

If the Association designates and/or hires a Plant Preserve Manager, the cost of such Plant Preserve Manager shall be a common expense of the Association.

(d) No Improvements, Excavation or other work which in any way alters any Plant Preserve from its natural state or existing state on the date when such Plant Preserve was leased, licensed or delegated to the Association, shall be done, except in strict compliance with provisions of Sections 5.11, 5.12 and 5.13.

(e) Restricted Access to Zone 1: Except to the extent otherwise permitted pursuant to the provisions of paragraphs (a) and (b) above, no one other than DHHL, the Plant Preserve Manager approved by DHHL, or consultants and contractors retained or designated by

DHHL or directly by the Plant Preserve Manager, and persons expressly authorized by DHHL, are permitted within Zone 1 areas.

(f) Limited Access to Zones 2 and 4: Except to the extent otherwise permitted pursuant to the provisions of paragraphs (a) and (b) above, and subject to the discretion of the Plant Preserve Manager, limited activities may be allowed in Zone 2 and 4 areas, such as volunteer work to conduct out-planting, invasive species removal, infrastructure construction, repair and maintenance, classes and tours by schools, community or academic groups, and cultural or educational activities. All activities in Zones 2 and 4 shall be conducted under the direct oversight and supervision of the Plant Preserve Manager, and shall;

(1) Be consistent with the purpose and intention of the Plant Preserves per Section 5.11 (c) above; and

(2) Not conflict with the Management Objectives of the Plant Preserves per Section 5.11 (d) above; and

(3) Be limited to those described in the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, the Section 7 Agreement, or subsequent agreements resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve; and

(4) Comply with all conditions or requirements that may be later imposed by DHHL.

(g) Access to Zone 3 Areas:

(1) Zone 3 Areas designated by DHHL for Passive Use: Except to the extent otherwise permitted pursuant to the provisions of paragraphs (a) and (b) above, DHHL may permit some Zone 3 areas to be available to the Association for managed and regulated passive recreational uses which do not damage or compromise the native habitat, such as controlled access, walking trails, hiking, and landscape viewing, and organized and supervised educational and cultural activities, which shall be overseen and administered by the Plant Preserve Manager. All use of the Plant Preserves by each Lessee and such Lessee's Family, guests, invitees and all other parties shall be subject to their compliance with the provisions hereof and any and all rules and restrictions established and modified by DHHL for the Plant Preserves, including the type, hours, and magnitude of passive recreational use permitted in such portions of a Plant Preserve. Uses of, and activities in, Plant Preserves shall be limited to those described in the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, the Section 7 Agreement, or as described under any Agreement resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve. Monitoring and control of the uses and hours or use of these Zone 3 areas shall be administered by the Plant Preserve Manager on behalf of DHHL or the Association. The right of Lessees and the Lessee's Family, guests and invitees to use and enjoy any portion of a Plant Preserve must first be authorized and designated by DHHL, and shall be subject to the provisions hereof and all rules and restrictions established and modified by DHHL for the Plant Preserves.

(2) Zone 3 Areas not designated by DHHL for Passive Use: Access to Zone 3 Areas not approved for use by DHHL for passive recreational use by the Association shall be identical to the access restrictions and limitations stated for Zones 2 and 4 above, except to the extent otherwise permitted pursuant to the provisions of paragraphs (a) and (b) above.

5.13 Plant Preserve: Construction and Alteration of Improvements.

No Improvements, Excavation or other work which alters any Plant Preserve from its natural or improved state on the date when such Plant Preserve was classified as Common Area and/or leased, licensed or delegated to the Association shall be conducted, except in compliance with the conditions of Sections 5.11, 5.12 and this Section 5.13 and the following provisions:

(a) No person other than DHHL, or a Developer, the Association, Governmental Agency, or Plant Preserve Manager, and their respective contractors and employees, acting with the approval, or on behalf, of DHHL, shall improve, excavate, construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon, any Plant Preserve. In addition, the following conditions apply:

(1) Any and all work in Zone 1 areas shall only be conducted by DHHL, the Plant Preserve Manager approved by DHHL, consultants or contractors retained or designated by DHHL or directly by the said Plant Preserve Manager, and persons expressly authorized by DHHL; and

(2) Any and all work in Zone 2 and 4 areas, or Zone 3 areas not approved by the Association and DHHL for passive recreational use shall only be permitted and conducted under the oversight and supervision of the Plant Preserve Manager.

(b) The Association, acting for its Plant Preserve Manager, shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Plant Preserve, or for any proposed Excavation or Fill or change to the natural or existing drainage to DHHL, or the appropriate Committee upon consent or direction from DHHL, for approval in such form and containing such information as DHHL or the Committee may from time to time require. DHHL and/or the Committee shall approve the plans and specifications upon satisfaction of the following conditions:

(1) Any plans to construct any new Improvements, or to alter the exterior appearance of any existing Improvement upon any Plant Preserve shall comply with the standards set forth in Sections 5.02 and 5.05, which standards will also apply to Plant Preserve, and that the design of such Improvements is in harmony with other Improvements and the overall appearance of Villages of La'i 'Ōpua; and

(2) Any plans to construct any new Improvements in, or to alter the exterior appearance of any existing Improvement upon, any Plant Preserve shall comply with the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, the Section 7 Agreement, or as described under any agreement resulting from any consultation under

Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve; and

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

(4) If such plans are approved by the Committee, the Association shall then be required to obtain the approval of DHHL of such plans.

(c) The provisions of this Section 5.13 to the contrary notwithstanding, no approval by the Committee shall be required for:

(1) Any construction or modification done by or for DHHL, or any Developer or Plant Preserve Manager authorized by DHHL, including without limitation any construction or modification of Recreational Facilities by DHHL, or any Developer or Plant Preserve Manager and any work done by DHHL, or any Developer or Plant Preserve Manager, their representatives, agents, employees or contractors in connection with the construction or modification of subdivision Improvements or in connection with the construction or modifications of any roadways, signage or landscaping or any electrical, cable, television, communication, water, sewer or other utilities; and

(2) Clearing, grubbing, and removal of invasive or non-desirable non-native plants, and planting of native dry-land forest plants, conducted under the oversight and supervision of the Plant Preserve Manager; and

(3) Horticultural, botanical, or arborist activities and tasks deemed necessary for implementation by the Plant Preserve Manager to ensure the continued health and survival of native plants in, to advance the purpose and intent of, or to accomplish the management objectives of, the Plant Preserves, conducted under the oversight and supervision of the Plant Preserve Manager.

(d) Any or all work or construction in Zone 1 areas shall be conducted only by DHHL, the Plant Preserve Manager approved by DHHL, consultants or contractors retained or designated by DHHL or directly by the said Plant Preserve Manager, and persons expressly authorized by DHHL.

(e) In Zone 2 and 4 areas of any Plant Preserve, or Zone 3 areas not approved for passive recreational use by the Association by DHHL, the Association, without approval of the Committee, but only under the oversight and supervision of the Plant Preserve Manager, may at any time:

(1) Reconstruct, replace, refinish any Improvement upon a Plant Preserve in accordance with plans previously approved by DHHL, or if such Improvement existed upon the Plant Preserve when such Plant Preserve was leased, licensed or delegated to the Association, then in accordance with the original design, and the original or a higher standard of construction of such Improvement.

(2) Conduct the following in compliance with conditions described in any the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, or as described under any Section 7 Agreement resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve:

(i) Replace any destroyed native trees or any other native vegetation or plant new native trees, shrubs and ground covers historic to North Kona, and replace damaged, or install new, irrigation systems to support replacement native vegetation; and

(ii) Clearing, grubbing, and removal of invasive or non-desirable non-native plants, and planting of native dryland forest plants; and

(iii) Horticultural, botanical, or arborist activities and tasks deemed necessary for implementation by the Plant Preserve Manager to ensure the continued health and survival of native plants in, to advance the purpose and intent of, or to accomplish the management objectives of, the Plant Preserves.

(3) Place and maintain upon any Plant Preserve such signs as the Association may deem necessary for education, or protection, security, or enhancement of the Plant Preserve and for the health, safety and general welfare of Lessees and the public, provided that the design of any such signs first shall be approved by the Committee.

(f) In Zone 3 areas that DHHL has approved to be available to the Association for managed passive recreational uses, the Association may, without approval of the Committee, at any time:

(1) Reconstruct, replace, refinish any Improvement upon a Plant Preserve in accordance with plans previously approved by DHHL, or if such Improvement existed upon the Plant Preserve when such Plant Preserve was leased or licensed to the Association, then in accordance with the original design, and the original or a higher standard of construction of such Improvement;

(2) Replace any destroyed native trees or any other native vegetation or plant new native trees, shrubs and ground covers historic to North Kona, and replace damaged, or install new, irrigation systems to support replacement native vegetation, in compliance with conditions described in any the Plant Preserve Plan, or subsequent amendments approved by DOFAW, USFWS, and DHHL, or as described under any Section 7 Agreement resulting from any consultation under Section 7 of the Endangered Species Act of 1973 with USFWS applicable to the Plant Preserve; and

(3) Place and maintain upon any Plant Preserve such signs as the Association may deem necessary for education, or protection, security, or enhancement of the Plant Preserve

and for the health, safety and general welfare of Lessees and the public, provided that the design of any such signs first shall be approved by the Committee.

#### 5.14 Lots Owned by Exempt Organizations.

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

#### 5.15 Exempt Areas.

The provisions of Article 5 to the contrary notwithstanding, the restrictions on Improvements use and occupancy set forth in Sections 5.02, 5.05 and 5.08 shall not apply to any Lot that is not leased to a Lessee or so long as such Lot is owned by or leased to any Governmental Agency, and used for public, governmental or public or private utility purposes, exclusive of any residential use, to the extent that such restrictions shall prevent reasonable use of such Lot for said purposes. Upon cessation of such governmental use, the restrictions of Sections 5.02, 5.05 and 5.08 shall become applicable to the Lot. DHHL or Declarant shall have the power to release any Lot or other real property, temporarily or forever from any restrictions in Sections 5.02, 5.05 and 5.08 if such waiver shall be necessary or advisable to obtain acceptance of such real property by the Governmental Agency. A Governmental Agency which uses its Lot for public, governmental or public or private utility purposes, exclusive of any residential use, shall have no right to vote as a member of the Association, and shall not be liable for any Assessments under the provisions of Article 8, but shall be liable for all costs and expenses incurred by the Association in enforcing the provisions of the Restrictions.

#### 5.16 Presumption of Compliance.

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

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

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

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

### 5.17 Agricultural Operations.

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

Villages of La'i 'Ōpua are also located in the vicinity of a commercial airport, being the Keahole Airport, and there is the likelihood of noise from planes passing overhead or nearby.

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

Residents of the Villages of La'i 'Ōpua may also be subject to possible odor, air, noise and dust pollution resulting from the Queen Kaahumanu Highway, Kealakehe Parkway, Palani Road, and any other roadways which are within or adjacent to the Villages of La'i 'Ōpua.

Such Lessee, for himself or herself, his or her heirs, personal representatives, successors, assigns, such Lessee's Family, and any person using or occupying any Lot in Villages of La'i 'Ōpua shall be deemed by acceptance of such Lease to waive, release and agree to indemnify and hold harmless the State of Hawaii, Declarant, Developers and their respective officers, directors, employees, agents, successors and assigns from, any and all actions, claims for damages and costs (whether brought in nuisance, trespass, or any other area of law or equity, but excluding negligence), including attorney's fees, arising directly or indirectly out of or from the Agricultural Effects or any of the conditions or uses described herein. These provisions shall be deemed to be included in all subsequent leases and transfers of any Lot in Villages of La'i 'Ōpua.

## 6. NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE

### 6.01 General.

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



#### 6.02 New Construction Committee.

The New Construction Committee ("NCC") shall consist of at least three (3), but not more than five (5), persons and, except as otherwise provided herein, shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred percent (100%) of the Property has been developed and leased to Lessees other than Developers, the Declarant retains the right to appoint all members of the NCC who shall serve and may be removed at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Association shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Association.

#### 6.03 Modifications Committee.

The Association may establish a Modifications Committee ("MC") to consist of at least three (3), but no more than five (5), persons, all of whom shall be appointed by, and shall serve at the discretion of, the Association. Members of the MC may include Architects or similar professionals who are not Association Members. If established, the MC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures or Improvements on Lots and any open space appurtenant thereto. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

#### 6.04 Guidelines and Procedures.

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

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

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

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

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

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

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

#### 6.05 No Waiver of Future Approvals.

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

#### 6.06 Variance.

The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances, such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any Governmental Agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 6.07 Estoppel Certificate.

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

rely on the matters therein set forth in such certificates, such matters being conclusive as between the Association, the Lessee and such purchaser or mortgagee.

#### 6.08 Liability.

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

#### 6.09 Non-existence of Modifications Committee.

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

### 7. VILLAGES OF LA'I 'ŌPUA ASSOCIATION

#### 7.01 Organization.

The Association shall be organized as a nonprofit corporation under Chapter 414B, HRS, as amended. The Association shall have the duties, obligations and powers set forth in this Declaration, the Association's Articles of Incorporation, By-Laws and the other Governing Documents.

Creation of the Association may be deferred at the sole discretion of the Declarant provided that Declarant undertakes the functions required of the Association as described in this Declaration.

#### 7.02 Association Membership.

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

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

(1) The Lessee of any Lot within the Private Area, excluding Declarant and Developer; and

(2) Declarant, as to Lots that are not leased to a Lessee.

(c) No Association Member shall be terminated, or such Association Membership forfeited, except upon the termination of such Association Member's lease of a Lot. No Association Member may withdraw, transfer or otherwise dispose of such Association Member's Association Membership.

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

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

(2) Class B Association Members shall include Declarant.

Declarant's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate upon the lease of all interest in the Property by Declarant to Lessees, the Association and other third parties.

A Developer's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate with respect to a Lot upon the termination of its Lease of such Lot to a Lessee.

(e) An Association Member shall have all rights, duties, privileges and obligations of a Lessee to the extent set forth in this Declaration and the other Governing Documents.

#### 7.03 Voting Rights.

Association Members shall be entitled to vote as follows:

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

(b) Each Class B Association Member shall be entitled to one (1) vote for each Lot in the Property that is not leased to a Lessee.

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

#### 7.04 Duties and Obligations of the Association.

The Association shall have the following duties and obligations subject to the Governing Documents, to be performed and for the maintenance and improvement of Villages of La'i 'Ōpua for the benefit of the Lessees:

(a) The Association shall consider as part of Villages of La'i 'Ōpua all real property annexed to Villages of La'i 'Ōpua pursuant to Sections 4.02, 4.03 and 4.07 (but excluding any real property withdrawn pursuant to Section 4.05) and shall accept all Lessees as Association Members.

(b) The Association shall acquire, accept and hold title to all Common Areas, and all Pākau Preserves, Archaeological Preserves and other real property from time to time conveyed, leased, licensed or delegated to the Association pursuant to the provisions hereof, including all areas classified as Common Areas in Exhibits "B-1" and "B-2" and in any Declarations of Annexations or other declarations and documents annexing property to Villages of La'i 'Ōpua pursuant to Sections 4.02, 4.03 and 4.07. The Association may also acquire, accept and hold title to any other real, personal or mixed property; provided that Association shall not carry on any business or trade for profit. The Association may charge reasonable fees to Lessees for use of the Recreational Facilities on the Common Areas to defray the costs of construction, maintenance, repair or operation of Recreational Facilities, or of other facilities owned or to be maintained by the Association, where permitted under the Internal Revenue Code of 1986, as amended from time to time.

(c) The Association shall maintain the Common Area and other property leased, licensed or delegated to the Association, including without limitation Recreational Facilities, drainage facilities, walls, fences, entry features, mailboxes, equipment, landscaping, Lots, licenses, leases and easements, including those designated or reserved for dedication to Governmental Agencies, but held by the Association pending such dedication, and all Improvements located on the Common Area and such other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any Improvement constructed upon the Common Area by any Lessee, but may compel such Lessee to maintain such Improvement.

(d) To the extent classified as Common Area and/or leased, licensed or delegated to the Association, the Association shall maintain the Archaeological Preserves, including without limitation Recreational Facilities, drainage facilities, walls, fences, entry features, equipment, landscaping, Lots, licenses, leases and easements, including those designated or reserved for dedication to Governmental Agencies, but held by the Association pending such dedication, and all Improvements located on the Archaeological Preserve and other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any Improvement constructed upon an Archaeological Preserve by any Lessee, but may compel such Lessee to maintain such Improvement.

(e) To the extent leased, licensed or delegated to the Association, the Association shall maintain the Plant Preserves, including without limitation Recreational Facilities, drainage facilities, walls, fences, entry features, mailboxes, equipment, landscaping, Lots, licenses, leases

and easements, including those designated or reserved for dedication to Governmental Agencies, but held by the Association pending such dedication, and all Improvements located on the Plant Preserve and other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any Improvement constructed upon a Plant Preserve by any Lessee, but may compel such Lessee to maintain such Improvement.

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

(g) The Association shall accept and undertake the responsibility and obligation to upkeep, repair and maintain any area and Improvements within the Property (whether or not such area is formally designated a Lot) for which such responsibility and obligation has been delegated to the Association by DHHL or Declarant, or by a Developer with the consent of Declarant, provided that, (1) the area is intended to be leased, licensed or delegated to the Association as a Common Area, (2) the area is available for use by all Lessees within Villages of La'i 'Ōpua or is of general benefit to Villages of La'i 'Ōpua, as determined by Declarant in its sole discretion and (3) Declarant or a Developer gives the Association thirty (30) days prior written notice that responsibility for upkeep, maintenance and repair is being transferred to the Association.

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

(i) The Association may contract for, employ or otherwise provide, security and refuse disposal services if such services are not provided by the County of Hawaii or other Governmental Agency, and if the cost for such services is assessed directly or indirectly against the Lessees.

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

(1) All Improvements located upon any Common Area shall be insured against (i) loss or damage by fire (Group I perils), (ii) the risks covered by the standard extended coverage endorsements (Group II perils) and all risks (special perils), and (iii) such other hazards (including boiler and machinery comprehensive perils) or risks which a prudent businessman would insure against by an insurance company authorized to do business in Hawaii and in time of war against war damage to the extent such governmental insurance is obtainable at reasonable cost, in an amount as near as practicable to the full replacement costs thereof without deduction for depreciation through the replacement cost endorsement, and if applicable, the inflation guard

endorsement to ensure policy limits are maintained at full replacement value, by blanket policy or policies in the name of the Association; and

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

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

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

#### 7.05 Powers of Association.

The Association shall have all the powers set forth in the Articles of Incorporation, the By-Laws, the Restrictions and the other Governing Documents, and all powers conferred upon the Association by the Hawaii Nonprofit Corporation Act, Chapter 414B, HRS, as amended, subject, however, to limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, By-Laws, Restrictions and the other Governing Documents, to do all lawful things which may be authorized, required or permitted to be done by the Association under the Governing Documents and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the purposes of the Association or for the health, safety and general welfare of the Lessees of Villages of La'i 'Ōpua. Without limiting the generality of the foregoing, the Association shall have the following express powers:

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

(b) In fulfilling any of its duties and obligations under the Governing Documents, including, without limitation, its duties and obligations for the maintenance, repair, operation and administration of the Common Area or in exercising any of its rights to construct Improvements or other work upon any Common Area and any Recreational Facility, the Association shall have the following power, subject to the Governing Documents:

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

(2) To obtain, maintain and pay for such insurance policies or bonds as the Association may deem appropriate for the protection or benefit of Villages of La'i 'Ōpua, the Association, the members of the Board, the Committees or the Lessees;

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

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

(5) To contract and pay for, or provide for, fire, police and such other public safety and security as the Association may deem necessary for the benefit of Villages of La'i 'Ōpua and the Lessees; and

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

(c) The Association may from time to time employ the services of a manager (the "Manager") to manage the affairs of the Association, and to the extent not inconsistent with said Chapter 414B, HRS, the Association may delegate to the Manager any of its powers under the Governing Documents; provided, however, that the Manager may execute any contract on behalf of the Association for a sum not to exceed \$10,000 or for the performance of any work or services, which work or services will be completed within sixty (60) days, and shall not have the power to sell, convey, mortgage or encumber any real or personal property of the Association other than unserviceable maintenance or recreation equipment.

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

(e) The Association may exchange, sell, convey, or otherwise dispose of, for cash or on such terms as the Association shall approve, any personal property of the Association, the



retention of which personal property the Association has determined is no longer necessary, advantageous or beneficial for the Association or for the Lessees, and to borrow money, without limit as to the amount for any purpose and to secure the same by granting or pledging a security interest in any personal property of the Association; provided, however, that no such exchange, sale or other disposition of any personal property and no such borrowing and granting or pledging of security interests shall be made unless the same shall have been approved by an affirmative vote of not less than a two-thirds (2/3) interest of all Association Members (excluding Declarant and all Developers) who may vote in person or by proxy at a meeting of the Association duly called for such purpose, the notice for which meeting shall have described the personal property to be sold and the terms of sale or the amount of the borrowing and the personal property to be granted or pledged, and shall have given the reasons therefor. All proceeds of any disposition of any sale or borrowing, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Lessees, or in improving the properties of the Association.

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

(g) DHHL and the Association shall have the power and authority (but shall not be required) from time to time, in its own name or behalf or in the name and behalf of any Lessee who consents thereto, to commence and maintain actions or suits to restrain and enjoin any breach or threatened breach of the Governing Documents, including without limitation, these Restrictions, the New Construction Design Handbook or the Modifications Rules and Guidelines, or to enforce by mandatory injunction or otherwise any of the provisions of the Governing Documents, including without limitation, these Restrictions or the New Construction Design Handbook or the Modifications Rules and Guidelines.

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

#### 7.06 Rules.

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

(1) The use of Common Area, including Recreational Facilities, by any Lessee or by the Lessee's Family, invitees or guests of such Lessee;

(2) The Plant Preserves and Archaeological Preserves to the extent they are designated as Common Area, and/or leased, licensed or delegated to the Association; provided that such rules and regulations shall not be inconsistent with the rules and restrictions established by DHHL for the Preserves;

(3) The use of Roads;

(4) The collection and disposal of refuse;

(5) The burning of open fires, except within 20 feet of any boundary, or interior, of any Plant Preserve, which shall be prohibited;

(6) The maintenance of animals within Villages of La'i 'Ōpua; and

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

(b) With respect to subsection (a) (3) above, the Rules may provide for:

(1) Parking restrictions;

(2) Maximum speeds for vehicular traffic on Roads;

(3) The time or times when commercial vehicles may be permitted to use Roads leased or licensed to the Association; and

(4) The types of vehicles other than passenger automobiles which may be permitted to use Roads leased or licensed to the Association.

(c) The Association shall maintain a copy of the Rules as adopted, amended or repealed from time to time, certified by the secretary of the Association, and shall deliver a duplicate copy to each Lessee upon his lease of a Lot, and shall deliver a copy of each new rule or amendment of an existing rule and notice of repeal of any rule to each Lessee. The Rules shall be incorporated in and have the same force and effect as if they were a part of the Restrictions. The Rules shall be consistent with the Act, Restrictions and other Governing Documents. Failure of any Lessee to receive a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

#### 7.07 Liability of Members of the Board.

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

7.08 Exclusive Powers of the Association.

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

7.09 Association Newsletters.

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

7.10 Board of Directors.

The business and affairs of the Association shall be managed by a Board of Directors elected by the Association Members or appointed by Declarant in accordance herewith. The Board shall consist of an odd number of directors, but not fewer than seven (7) persons and not greater than eleven (11) persons, unless increased by amendment to this Declaration as provided herein. Every member of the Board shall be an Association Member, or other person designated by Declarant. All members of the Board of Directors shall be residents of the State of Hawai'i. There shall not be more than one representative on the Board from any one Lot that is leased by any person other than DHHL. The Board of Directors shall consist of the following:

(a) Each Village shall be represented by one director appointed by Declarant for, or elected by the Association Members of, such Village in accordance with this Declaration, the Articles of Incorporation and the By-Laws. Except for directors appointed by Declarant as set forth below, each director shall be a Lessee of a Lot in the Village represented by such director, and shall serve for a term of three (3) years according to the classifications described below, unless sooner removed, terminated or vacated, and a successor to each such director shall be appointed by Declarant or elected by the Association Members of the Village so represented, as set forth herein and in the Articles of Incorporation and By-Laws.

All directors, if any, other than the directors designated to represent a specific Village, shall be appointed by Declarant as set forth below or elected by vote of the Association Members from all Villages and may be a Lessee of a Lot in any Village, but not more than two (2) Lessees of Lots in the same Village may serve on the Board at the same time, unless the number of Villages annexed to the Villages of La'i 'Ōpua is not sufficient to fill all vacancies on the Board in which event the number of directors from each Village then annexed shall be equal to the extent possible. Except for directors appointed by Declarant as set forth below, each such director shall serve for a term of three (3) years according to the classifications described below, unless sooner removed, terminated or vacated as set forth herein or in the Articles of Incorporation or By-Laws.

(b) Notwithstanding the foregoing, the initial Board shall be comprised of seven (7) members appointed by Declarant as follows:

(1) One (1) director, who shall be a Lessee of a Lot within Village 3, shall be designated by Declarant to represent Village 3 and shall serve until the first annual meeting of the Association, at which a successor director shall be elected by the Association Members in Village 3.

(2) One (1) director, who shall be a Lessee of a Lot within Village 4, or if there is no Lessee within Village 4, then a Lessee of a Lot in any Village annexed to the Villages of La'i 'Ōpua, shall be designated by Declarant to represent Village 4. Such director shall serve until removed and replaced by a successor director appointed by Declarant or upon the Recording of a Lease for a Lot within Village 4, at which time the term of such director or its successor shall automatically terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within Village 4, and who shall serve until the next annual meeting of the Association at which a successor director shall be elected by the Association Members in Village 4 to represent Village 4 in accordance with the Governing Documents and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

(3) One (1) director, who shall be a Lessee of a Lot within Village 5, or if there is no Lessee within Village 5, then a Lessee of a Lot in any Village annexed to the Villages of La'i 'Ōpua, shall be designated by Declarant to represent Village 5. Such director shall serve until removed and replaced by a successor director appointed by Declarant or upon the Recording of a Lease for a Lot within the Village 5, at which time the term of such director or its successor shall automatically terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within Village 5, and who shall serve until the next annual meeting of the Association at which a successor director shall be elected by the Association Members in Village 5 to represent Village 5 in accordance with the Governing Documents and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

(4) One (1) director, who shall be a Lessee of a Lot in any Village annexed to the Villages of La'i 'Ōpua, shall be designated by Declarant to represent Village 2. Such director shall serve until removed and replaced by a successor director appointed by Declarant or upon the annexation of Village 2, at which time the term of such director or its successor shall automatically terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within Village 2, and who shall serve until the next annual meeting of the Association at which a successor director shall be elected by the Association Members in Village 2 to represent Village 2 in accordance with the Governing Documents and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

(5) One (1) director, who shall be a Lessee of a Lot in any Village annexed to the Villages of La'i 'Ōpua, shall be designated by Declarant to represent Village 1. Such director shall serve until removed and replaced by a successor director appointed by Declarant or upon the annexation of Village 1, at which time the term of such director or its successor shall automatically terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within Village 1, and who shall serve until the next annual meeting of the Association at which a successor director shall be elected by the Association Members in Village 1 to represent Village 1 in accordance with the Governing Documents and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

(6) One (1) director, who shall be a Lessee of a Lot within any Village annexed to the Villages of La'i 'Ōpua, shall be designated by Declarant initially as an at-large director representing the Villages of La'i 'Ōpua as a whole until such time as the next Village is annexed to the Villages of La'i 'Ōpua. Such director shall serve until removed and replaced by a successor director appointed by Declarant or upon the annexation of the Village so next annexed, at which time the term of such director or its successor shall automatically terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within such Village so annexed, who shall be designated to represent the Village so annexed, and who shall serve until the next annual meeting of the Association at which a successor director shall be elected by the Association Members in such annexed Village to represent such Village in accordance with the Governing Documents, and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

(7) One (1) director, who may, but need not, be an Association Member or Lessee, who shall be designated by Declarant as an at-large director representing the Villages of La'i 'Ōpua as a whole, and not any particular Village, shall serve until removed and replaced by a successor director appointed by Declarant or until 100% of the Property is annexed to the Villages of La'i 'Ōpua, at which time the term of such director or its successor shall terminate and Declarant shall appoint a Lessee of a Lot within a Village that is not then represented by two (2) directors, and who shall serve until the next annual meeting of the Association, at which a successor director shall be elected by the Association Members in accordance with the Governing Documents, and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

Notwithstanding the foregoing, Declarant shall have the right to increase the number of directors of the Board up to eleven (11) members and to appoint up to four (4) additional directors, who may, but need not, be Association Members or Lessees, each one of whom shall be designated as at-large directors representing the Villages of La'i 'Ōpua as a whole. Each such director to serve until removed and replaced by a successor director appointed by Declarant or upon the annexation of additional Villages, at which time the term of one of such at-large directors or its successor designated by Declarant, shall terminate and Declarant shall appoint a successor, who shall be a Lessee of a Lot within such additional Village so annexed, and who shall serve until the next annual meeting of the Association, at which a successor director shall be elected by the Association Members in such annexed Village to represent such Village in accordance with the Governing Documents, and such elected director shall serve for a term of three (3) years in accordance with Section 7.10(a).

#### 7.11 Qualifications for Holding Office.

No Lessee who is more than thirty (30) days delinquent in paying any Assessment or other charges owed to the Association, or who has failed to correct or remedy a violation of the Governing Documents after receiving written notice thereof from the Board, Association or a Committee, shall be eligible to serve or continue to serve as a director, and any director who fails to remedy any such delinquency or violation within thirty (30) days after receiving such notice may be removed by a majority of the Board.

## 8. FUNDS AND ASSESSMENTS

### 8.01 Operating Fund.

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

### 8.02 Initiation Assessment.

The Association shall charge to each Lessee, except Lessees exempt under Section 8.05, and each such Lessee shall pay to the Association, a one-time assessment ("Initiation Assessment") upon the execution and delivery by DHHL to such Lessee of a Lease for a Lot thereby becoming an Association Member. The Initiation Assessment shall be in addition to any other Assessments provided for in this Article 8. The initial Initiation Assessment shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00). The Initiation Assessment may be increased or decreased pursuant to the Rules.

### 8.03 Maintenance Assessments.

(a) The Association shall establish, and determine the initial amount of, assessments ("Maintenance Assessments") to be levied and charged to each Association Member to pay for the costs and expenses incurred by the Association in performing its duties and obligations.

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

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

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

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

(c) In each Fiscal Year, the Board shall determine the per Lot Maintenance Assessment by dividing the sum determined pursuant to subsection 8.03(b) by the total number of Lots in the Private Area owned by Class A Association Members.

(d) The following real property shall not be subject to payment of any Assessments: (1) the Property or portions of the Property not annexed to Villages of La'i 'Ōpua; (2) any portion of the Property which has not yet been subdivided into individual residential Lots; (3) Lots which are not leased to a Lessee by a Lease; (4) any Lot owned by a Governmental Agency or Exempt Organization as described under Sections 5.14 and 5.15; (5) Common Areas; and (6) Cotenancy Areas that are not part of a Lot leased to a Lessee or Lessees.

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

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

(2) The number of non-exempt Lots leased, in the case of each Developer other than DHHL.

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

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

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

(h) A Lessee's obligation to pay Maintenance Assessments shall commence upon the later of annexation of the portion of the Property in which such Lessee's Lot is located or at such time as DHHL executes and delivers a Lease for the Lot to such Lessee. Lessees shall pay the Maintenance Assessments to the Association in equal quarterly installments on or before the first day of each January, April, July and October, or in such other installments as the Board may designate.

#### 8.04 Individual Special Assessments.

The Board shall levy a special assessment ("Special Assessment") against any Lessee whose acts or failure to comply with the Governing Documents or decisions resulting in the Association or Committees expending monies from the Operating Fund to enforce the Governing Documents or decisions of the Association or Committees. Such Special Assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, interest, all costs of enforcement, and engineers', Architects', attorneys', and accountants' fees incurred by the Association or Committees.

#### 8.05 Association, Declarant and Other Exemptions.

Lessees of the following Lots shall be exempt from Assessments under this Article 8 as follows: (a) the Association shall be wholly exempt; (b) Declarant shall be wholly exempt; (c) any Governmental Agency as described in Section 5.15 shall be wholly exempt; (d) any Exempt Organization as described in Section 5.14 shall be wholly exempt; and (e) a Developer shall be exempt from the Initiation Assessment pursuant to Section 8.02.

#### 8.06 Default in Payment of Assessments.

(a) Each Assessment under this Article 8 shall be a separate distinct and personal debt and obligation of the Lessee of the Lot against which the Assessment is made. No Lessee of a Lot shall have any personal liability for the payment of the debts and liabilities of the Association or for damage to any Common Area or any Lot not caused by such Lessee. Each Lessee of a Lot by acceptance of a Lease therefor whether or not so expressed in any such Lease, is deemed to covenant and agree to pay such Assessment to the Association. If the Lessee does not pay any installment of such Assessment when due, the Lessee shall be deemed in default and the amount of the unpaid Assessment, together with the amount of any subsequent unpaid Assessments plus interest thereon at twelve percent (12%) per annum plus costs, including reasonable attorneys' fees, shall be and become a lien upon the Residence located on such Lessee's Lot and the Improvements thereon upon recordation by the Association of a notice of default in the Official Records. Such lien shall be subordinate to the lien of any Insured Mortgage upon such Lessee's interest in the Lot and/or such Residence. The Lot Lessee's failure to pay an Assessment shall not be deemed or constitute a default under any Insured Mortgage.

(b) The sale or transfer of any lease interest in the Lot and/or the Improvements thereon by a Lessee shall be conditioned upon the payment, satisfaction and discharge of the lien for delinquent payments of Assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot of, or the transferring Lessee thereof from paying, such delinquent Assessments, or relieve the purchaser or transferee of the obligation to pay prospective Assessments. The Association may record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. The Association may seek satisfaction of the lien in accordance with rules and processes of DHHL, including its "Kanawai Enforcement Procedures". The Association may also maintain a suit to recover a money judgment for unpaid Assessments and such remedies shall be in addition to any other remedies provided by law for the enforcement of such Assessment obligation.



(c) Upon the request of an Association Member, the Association shall execute a certificate stating the amount of the unpaid Assessments secured by the lien upon leasehold interest in the Lot and Improvements thereon. Such certificate shall be conclusive upon the Association and the Association Member as to the amount of such unpaid Assessment as of the date of the certificate. The Association may charge a reasonable fee for furnishing such certificate.

(d) The foregoing sections of this Article 8 notwithstanding, in the event that a Lessee who is a lessee under a Lease from DHHL does not pay any installment of such Assessment when due, the following procedures shall control:

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

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

(3) If a Lease is revoked or terminated by DHHL, DHHL may, but shall not be obligated to, pay all or a portion of amounts owed by the Lessee of the Lease to the Association and may, but shall not be obligated to, continue to pay any future Assessments against the Lot until such time as DHHL issues a new Lease for the Lot.

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

## 9. MISCELLANEOUS PROVISIONS

### 9.01 Amendment or Repeal.

(a) Declarant may by written amendment at any time until one hundred percent (100%) of the Property has been annexed and leased to Lessees other than Developers, unilaterally amend or supplement without the consent of the Lessees or Association:

(1) These Restrictions and this Declaration; or

(2) The general plan of Villages of La'i 'Ōpua as described or depicted in Exhibit "A".

(b) DHHL or Declarant may also by written amendment at any time after one hundred percent (100%) of the Property has been annexed and leased to Lessees other than Developers, unilaterally amend or supplement these Restrictions and this Declaration without the consent of the Lessees or Association to:

(1) To bring any provision hereof into compliance with the Act, any action or policies adopted by the Hawaiian Homes Commission, or any applicable governmental statute, rule, regulation or judicial determination;

(2) To enable any title insurance company authorized to do business in Hawaii to issue title insurance coverage on the Lots;

(3) To enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including for example, HUD, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or

(4) To satisfy the requirements of any Governmental Agency.

(c) These Restrictions may also be amended or repealed by the affirmative vote of not less than seventy-five percent (75%) of the total number of each class of Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum is present. The notice of such meeting shall state as a purpose the consideration of such amendment or repeal and shall include the proposed text of the amendment or identification of the provisions to be repealed. The Board shall be authorized to restate the provisions of this Declaration from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein or any provisions contained in any supplemental and/or annexing declarations filed in accordance with the provisions hereof. The Board may record said restated Declaration in the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

(d) The provisions of subsection 9.01(c) above to the contrary notwithstanding, no provision of this Declaration may be amended or repealed without the prior written consent of DHHL. No amendment or repeal shall have the effect of limiting, abridging, modifying or terminating any rights, easements, privileges and immunities of DHHL (as Declarant, a Developer and DHHL), expanding the liability of DHHL (as Declarant, a Developer or DHHL) or conflicting with the Act or any action or policies of the Hawaiian Homes Commission, or any authority and powers reserved to DHHL or Declarant, unless DHHL (as Declarant, a Developer and DHHL) consents in writing to such amendment or repeal prior to the consideration of such amendment or repeal.

#### 9.02 Enforcement; Non-Waiver.

(a) DHHL, Declarant, the Association or any Lessee shall have the right to enforce any of the covenants, conditions, restrictions, obligations, Assessments, liens and charges now or hereafter imposed by the Governing Documents upon other Lessees or upon any property within Villages of La'i 'Ōpua, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Lessee who violated any such restriction, covenant, condition, or restriction or failed to pay and satisfy when due any such Assessments, lien or charge.

(b) No Lessee or the Association shall have any right to enter upon the Lot of any other Lessee or to abate any nuisance or enforce any provision hereof against another Lessee or

the Association until reasonable notice and demand has been given to the Lessee of the Lot to cure or rectify the violation involved, provided that no notice need be given if the violation involved, poses an immediate threat of personal injury or property.

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

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

(e) The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation, lien or charge of the Governing Documents shall not constitute a waiver of any right to enforce any such provision of the Governing Documents in any other case with respect to any Lessee or Lot. No right of action shall accrue in favor of any Lessee against the Association, DHHL or Declarant for or on account of any failure by the Association, DHHL or Declarant to bring any action on account of any violation or breach, by any Lessee of the provisions of these Governing Documents, or the land use or zoning designated by DHHL for such Owner's Lot, or the Village in which such Lot is located, as may be modified by variances that may be approved by the County, State or DHHL.

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

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

(b) No provision of the Governing Documents shall excuse any person from observing any law or regulation of any Governmental Agency having jurisdiction over such person or over Villages of La'i 'Ōpua. If all uses to which a Lot may be devoted under the provisions of the Governing Documents are illegal under the applicable zoning ordinances or statutes, a Lessee may use such Lessee's Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Governing Documents which lawfully apply to the Lot.

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

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

(e) The titles of articles, sections, subsections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of the Governing Documents.

(f) In the event that the terms and provisions of the Governing Documents conflict with the Lease or the Act, the requirements of the Lease or the Act, as the case may be, shall prevail and control.

#### 9.04 Subdivision and Consolidation.

No Lot within Villages of La'i 'Ōpua shall be subdivided or consolidated and resubdivided by the Association or any Lessee. No easements, leases or licenses may be granted by the Association or any Lessee, without the prior written approval of the Declarant and DHHL, which approval may be withheld by Declarant or DHHL in their discretion. The Declarant and DHHL shall review the proposed easement, lease or license, and may charge a reasonable fee for review as determined by the Declarant. If the approval of the Declarant and DHHL are given, the Declarant and DHHL shall evidence its approval on a copy of the easement, lease or license document so approved by Declarant and DHHL.

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

(a) DHHL may (but shall not be obligated to) lease, license or delegate, without the consent or approval of the Association or any Lessee of real property, interests in real property or other rights and obligations to the Association as Common Area, a Plant Preserve or an Archaeological Preserve. The Association shall thereafter accept and hold such real property, interests in real property and or other rights and obligations, subject to any exceptions, liens, encumbrances, conditions, restrictions and reservations set forth herein and in the lease, license or delegation, including the following:

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

(2) Easements, leases, licenses and rights-of-way on, over or under all or any part of such real property and real property interests as may be reserved to Declarant or DHHL, or a Developer with Declarant's and DHHL's consent, or granted to any Lessee in accordance with the Governing Documents;

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

(4) Easements, leases and licenses for roads, poles, wires, pipelines, ditches or other facilities for lighting, electricity, telephone, gas, community antenna television, water,

sewer, irrigation, drainage and storm water transmission, landscaping and any other utility systems in favor of public or private utilities, Governmental Agencies or individuals; and

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

(b) DHHL, Declarant, or a Developer upon obtaining DHHL's and Declarant's consent in writing, may change the land classification of any real property, real property interests or other rights and obligations not previously designated as Common Area of which DHHL, Declarant or such Developer is the owner, and may reclassify and lease or license such real property, real property interests or other rights and obligations to the Association pursuant to the provisions of Section 5.01 and this Section 9.05.

(c) The Association shall accept all leases, licenses and delegations of Common Area, Plant Preserves and Archaeological Preserves by DHHL, Declarant or a Developer upon obtaining DHHL's consent in writing.

(d) Any owner of any real property (other than a Lot) within the Villages of La'i 'Ōpua which is not a Common Area may petition the Association to accept a dedication, lease or license of such real property as a Common Area. The Association may accept the same if the Board finds the use of such real property to be of benefit to all Association Members. Such real property shall become Common Area upon acceptance.

(e) Following the classification, lease, license or delegation of Common Area by DHHL, Declarant or by a Developer to the Association, DHHL, Declarant or such Developer may, without the approval of any Committee, but subject to the provisions hereof, construct, reconstruct, refinish or alter any Improvement upon or make or create any Excavation on or Fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area if DHHL, Declarant or such Developer shall determine that any such work (1) is reasonably necessary for any utility installation serving any property within Villages of La'i 'Ōpua, (2) is reasonably necessary for the construction of any facility for use by the Lessees, (3) is desirable in order to provide access to or to enhance the use and enjoyment of the Common Area, (4) is desirable to preserve any property which constitutes a part of Villages of La'i 'Ōpua, or (5) is in the best interests of DHHL or the Act.

#### 9.06 Assignment of Powers.

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

#### 9.07 Condemnation of Common Area.

If any portion of the Common Area or any interest therein shall be taken by eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be the sole property of, and paid to DHHL, except any portion of an award or compensation attributable

to any Improvements installed by the Association so taken, which shall be the sole property of the Association. No Lessee shall be entitled to any portion of such award and no Lessee shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation.

9.08 HUD Approval of Actions.

Notwithstanding any provision contained in this Declaration to the contrary so long as any Lot in the Property is subject to the lien of an Insured Mortgage, HUD must approve any amendment to these Restrictions.

9.09 Obligations of Lessees, Avoidance, Termination.

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

9.10 Notices, Documents, Delivery.

Whenever notice is required, reasonable notice shall be deemed to be five (5) days. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by first class mail prepaid postage, or by hand delivery, or by facsimile telecopier with a copy sent by first class mail, to any Lessee at the address of the Lessee as shown in the Association's record of ownership or the address of the Lot owned by the Lessee if no other address has been designated, to DHHL and the Declarant at 91-5420 Kapolei Parkway, Kapolei, Hawai'i or such other address as may be designated by DHHL and Declarant from time to time for receipt of notices, and to the Association, the Board of Directors, or the New Construction Committee or Modifications Committee at the address of the Association's Manager or such other address as is designated by the Association, the Board, or New Construction Committee or Modifications Committee for receipt of notices from time to time. Any such address may be changed from time to time by sending notice to all other parties as above provided. Service of such notice or demand shall be deemed complete on the date of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier.

9.11 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of Hawaii, including the Act.

DHHL, Declarant, Lessees, Association Members and Association intend that all provisions of this Declaration shall be given full force and effect to the maximum extent permitted by Hawaii law, including the Act.

9.12 Captions/Gender/Plural vs. Singular.

The headings of articles, sections, subsections and paragraphs herein are for convenience and reference only and shall in no way define, limit, or describe the scope or intent of any provision herein. The use of any gender herein shall be deemed to include the other gender and

the use of the singular herein shall be deemed to include the plural (and vice versa) whenever appropriate. The reference to a person or persons or Lessee or Lessees shall include natural persons, corporations, unincorporated associations, partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

9.13 Interpretation of Terms and Phrases. The terms and phrases used in this Declaration, other than those capitalized terms given specific meanings, shall be interpreted to have their ordinary, usual, and customary meaning. In the event a question arises as to the meaning of such a word or phrase, the word or phrase shall have the meaning provided for such term or phrase in Black's Law Dictionary or Webster's New World Dictionary (Current Edition). In the event a term or phrase in a provision of the Declaration may be interpreted to have more than one meaning, the meaning that provides for enforceability and/or validity of the provision shall be the meaning of the term or phrase in question.

## 10. IMPOSITION OF FINES

10.01 Imposition of Fines. The Board of Directors shall have the right, in addition to any other right set forth in this Declaration and the other Governing Documents, to impose monetary fines upon Lessees, the Lessee's Family, and any other person using or coming upon the Property or any part thereof for any purpose whatsoever, for violations of this Declaration and the other Governing Documents, the land use and zoning designated by DHHL for the applicable Village or Lot, as may be modified by variances that may be approved by the County, State or DHHL, or any statute, ordinance, or applicable requirement of any Governmental Agency, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Manager, or other persons designated by the Board from time to time, to impose the aforementioned fines in accordance with such schedule. Notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, may be published at least once in an Association newsletter prior to the imposition of any fines thereunder. If published, said newsletter shall be mailed to all Lessees at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate the schedule of fines or any fines imposed in accordance with this provision.

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

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

## 11. DISCLOSURES AND DHHL RIGHTS

### 11.01 Hazardous Materials.

(a) Each Lessee and the Association shall indemnify DHHL against and hold DHHL harmless from any and all costs and expenses (including reasonable attorney's fees), losses, damages (including foreseeable or unforeseeable consequential damages) and liabilities incurred by DHHL which may arise out of, or may be directly or indirectly attributable to, (i) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, discharge, disposal or presence of any hazardous material, substance or waste or the like as may be defined in any Hazardous Materials Law, on, within, under or about such Lessee's Lot (as to each such Lessee), the Common Area and the Preserves, (ii) DHHL's investigation and handling (including the defense) of any Hazardous Materials Claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof, and (iii) DHHL's enforcement of this Declaration, including this Section, whether or not suit is brought therefor.

(b) As used in this Declaration, the term "Hazardous Materials Laws" shall mean and include all federal, state or local laws, ordinances, rules or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, within, under or about the Lots, the Common Area and the Preserves, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state or local laws or ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

(c) For purposes hereof, the term "Hazardous Materials" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminates, hazardous wastes, toxic substances, petroleum and gasoline products or related materials and any and all substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" under the Hazardous Materials Laws.

This Section 11.01 shall run with the land of the Lots, Common Area and Preserves, and shall survive (1) the assignment, transfer or termination of the Lease for each Lessee's Lot and the leases or licenses of the Common Area and Preserves, and (2) any transfer of an interest in the Lots, Common Area and Preserves by any security agreement, including an Insured Mortgage, and (3) any default or foreclosure of such security agreement and shall be included in any document assigning or transferring the Lots, Common Area and Preserves and be binding on the Lessee and Association and all subsequent lessees of the Lots and subsequent lessees or licenses of the Common Area and Preserves.

11.02 Walls and Fences. Perimeter walls and fences ("Perimeter Walls and Fences") have been or will be constructed within portions of the Villages of La'i 'Ōpua affecting various



Lots (collectively, the "Perimeter Wall and Fence Lots"), and are significant features of the Villages of La'i 'Ōpua, serving the primary functions of facilitating privacy and security within, as well as the aesthetic appearance of, the Villages of La'i 'Ōpua. Some of the Perimeter Walls and Fences may be located within easement or license areas to be granted for access, maintenance and other purposes ("Perimeter Wall and Fence Easements"), affecting various Lots, which Perimeter Wall and Fence Easements will be granted in favor of the Association, to the extent that the Association is responsible for the repair and maintenance of said Perimeter Walls and Fences.

In addition, other walls and fences ("Lot Walls and Fences") may be located within various Lots ("Wall and Fence Maintenance Lots") and the Lessees of these Wall and Fence Maintenance Lots shall be responsible for maintaining and repairing, at their cost and expense, the portions of the Lot Walls and Fences that are located on such Lessee's Lot, including Lot Walls and Fences located on the boundary between Lots in which event the Lessees of both of such Lots shall be jointly and severally responsible for the maintenance and repair of such Lot Wall and Fence in a good and safe condition on a continuous basis ("Wall and Fence Maintenance Obligation"). No Lot Wall or Fence may be damaged, altered or modified by any Lessee or the Association without the prior written consent of Declarant. Each Lessee understands and agrees that the Wall and Fence Maintenance Lots may be subject to an easement or license for access, maintenance or other purposes ("Lot Wall and Fence Easements") and/or a Wall and Fence Maintenance Obligation, and the Lessees of the Wall and Fence Maintenance Lots hereby agree that such Lot Walls and Fences shall be preserved and shall grant to the Association, Declarant and DHHL access to the Lot Walls and Fences, and each Lessee of a Wall and Fence Maintenance Lot hereby agrees to maintain and repair the Lot Walls and Fences that are located on such Lessee's Lot or on the boundary of such Lessee's Lot and an adjoining Lot in accordance with the Wall and Fence Maintenance Obligation.

The Perimeter Walls and Fences and the Lot Walls and Fences are collectively referred to as the "Walls and Fences" and the Perimeter Wall and Fence Lots and the Wall and Fence Maintenance Lots are collectively referred to as the "Wall and Fence Lots". The Perimeter Wall and Fence Easements and the Lot Wall and Fence Easements are collectively referred to as the "Wall and Fence Easements".

The Walls and Fences present certain risks of danger to persons, especially children, and property. Accordingly, each Lessee hereby agrees to take all necessary precautions, including maintaining such Lot Walls and Fences in accordance with such Lessee's Wall and Maintenance Obligation, to protect himself or herself, and such Lessee's Family, guests, invitees and their respective property from the dangers presented by the Walls and Fences. By entering into a Lease, each Lessee shall be deemed to have assumed any and all risks, disturbances, liabilities, nuisances, hazards and damages associated with the Walls and Fences and the Wall and Fence Easements, and each Lessee agrees to maintain, preserve and not disturb, damage, alter or modify, and will take affirmative action to prevent any person or thing from destroying, damaging, disturbing, altering or modifying, such Walls and Fences, and, in addition, with respect to a Wall and Fence Maintenance Lot, will satisfy the Wall and Fence Maintenance Obligation and all requirements with respect thereto imposed by Declarant, DHHL or any other Governmental Agency, or any other law, ordinance, rule or regulation.

Each Lessee shall indemnify, defend and hold harmless Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from the acts or omissions of such Lessee and such Lessee's Family, guests and invitees with respect to the Walls and Fences and Wall and Fence Easements, or the failure of such Lessee to fully satisfy the Wall and Fence Maintenance Obligation, and shall release Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from, and shall intentionally waive, all claims for damages or losses resulting from the Walls and Fences and Wall and Fence Easements. DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself and its successors and assigns to modify, relocate, realign said Walls and Fences and/or Wall and Fence Easements, and to designate and grant said modified Wall and Fence Easements, to the extent determined by DHHL or its successors and assigns to be necessary or desirable to preserve or further the integrity and functions of the Walls and Fences and/or Wall and Fence Easements, to the Association, any appropriate Governmental Agency and/or any public utility or other person or entity, and DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself, its successors and assigns to perform all acts, on behalf each Lessee, as well as for the benefit of DHHL and its successors and assigns and/or lien holders of the Villages of La'i 'Ōpua, which DHHL shall determine to be necessary or desirable to effect the same; provided that no portion of any Wall or Fence or Wall and Fence Easements may be relocated or realigned more than five (5) feet from its location existing on the date that the Lease demising the affected Lot to such Lessee is Recorded, without the written consent of the Lessee of such Lot, which consent shall not be unreasonably withheld or delayed; provided further that if such Lessee fails to consent or reasonably withhold its consent within thirty (30) days after receipt of DHHL's request for said consent, such Lessee shall be deemed to have given the requested consent. Each Lessee does consent to any and all such acts performed by Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors or assigns as provided hereinabove and agrees to assume such obligations as may reasonably be imposed by the Wall and Fence Easement and/or the Wall and Fence Maintenance Obligation or any other instrument effecting any of the foregoing, and further agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same. Each Lessee does hereby appoint Declarant, DHHL and their respective successors and assigns, as such Lessee's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do all such things on such Lessee's behalf to effect the same, which grant of such power, being coupled with an interest, is irrevocable for the term of said Wall and Fence Easements and the Wall and Fence Maintenance Obligation and such other instruments, and shall not be affected by the disability of any party or parties. In addition, any lender or lien holder which obtains a mortgage, security interest or other liens encumbering a Lot or any interest therein, by virtue of obtaining such mortgage, security interest or lien, will agree that such mortgage, security interest or lien shall be automatically subordinate to said Wall and Fence Easements and Wall and Fence Maintenance Obligation and any and all easements, leases, licenses and/or right-of-way, over, under or on the Lots granted and/or received pursuant to the Wall and Fence Easements and/or this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Insured Mortgage shall be subordinate to any Wall and Fence Easement, easement, lease, license or

right-of-way granted over, under or on the Lot encumbered by said Insured Mortgage after said Insured Mortgage was Recorded, without the consent of the then holder of said Insured Mortgage.

11.03 Drainage. Drainage within the Subdivision will be controlled by several surface and underground drainage facilities (collectively, the "Drainage Facilities") some of which will be located within easements and/or licenses to be designated and granted for drainage, access, maintenance and other purposes ("Drainage Easements"), affecting various Lots ("Drainage Lots") to minimize soil erosion and flooding by conveying flows into various drainage facilities. No structures may be constructed over, under or across any Drainage Facilities. Each Lessee understands and agrees that Drainage Facilities may be located on Drainage Lots, and each Drainage Lot is subject to a Drainage Easement, and each Lessee agrees to preserve such Drainage Facilities and prohibit anyone, including the such Lessee's Family, guests and invitees from entering into, or disturbing, such Drainage Facilities and hereby grants to the Association, DHHL and Declarant access to these Drainage Facilities. By accepting or acquiring an interest in a Drainage Lot, the Lessee thereof shall be deemed to have assumed any and all risks, disturbances, liability, nuisances, hazards and damages associated with the Drainage Facilities and/or Drainage Easements, and such Lessee agrees to maintain, preserve and not disturb, and will take affirmative action to prevent any person or thing from destroying, damaging or otherwise disturbing such Drainage Facilities, and, in addition, shall satisfy all requirements with respect thereto imposed by the Declarant or any Governmental Agency, or any other law, ordinance, rule or regulation. Each Lessee of a Drainage Lot shall indemnify, defend and hold harmless Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from the acts or omissions of such Lessee and such Lessee's Family, guests and invitees with respect to the Drainage Facilities and/or the Drainage Easements, and shall release Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from, and shall intentionally waive, all claims for damages or losses resulting from the Drainage Facilities and/or the Drainage Easements. DHHL, as the fee simple owner of all Lots and the Common Area, has, and does hereby reserve, the right (but not the obligation), on behalf of itself and its successors and assigns to modify, relocate, realign said Drainage Facilities and/or Drainage Easements, and to designate and grant said modified Drainage Easements, to the extent determined by DHHL or its successors and assigns to be necessary or desirable to further the purposes of the Drainage Facilities and/or Drainage Easements, to the Association any Governmental Agency and/or any public utility or other person or entity, and DHHL has, and does hereby reserve, the right (but not the obligation), unto itself, its successors and assigns, to perform all acts, on behalf each Lessee of a Drainage Lot, as well as for the benefit of DHHL and/or other Lessees and lien holders of the Villages of La'i 'Ōpua, which DHHL, or its successors or assigns, shall determine to be necessary or desirable to effect the same; provided that no portion of any Drainage Facilities or Drainage Easements may be relocated or realigned more than five (5) feet from its location existing on the date that the Lease demising the affected Lot to such Lessee is Recorded, without the written consent of the Lessee of such Lot, which consent shall not be unreasonably withheld or delayed; provided further that if such Lessee fails to consent or reasonably withhold its consent within thirty (30) days after receipt of DHHL's request for said consent, such Lessee shall be deemed to have given the requested consent. Each Lessee of a Drainage Lot does consent to any and all such acts performed by Declarant, or its assigns, as provided hereinabove and agrees to assume

such obligations as may reasonably be imposed by the Drainage Easements or any other instrument effecting any of the foregoing, and further agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same. Each Lessee of a Drainage Lot does hereby appoint DHHL and its successors and assigns, as such Lessee's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do all such things on such Lessee's behalf to effect the same, which grant of such power, being coupled with an interest, is irrevocable for the term of said Drainage Easements and such other instruments, and shall not be affected by the disability of any party or parties. In addition, any lender or lien holder which obtains a mortgage, security interest or other liens encumbering a Drainage Lot or any interest therein, by virtue of obtaining such mortgage, security interest or lien, will agree that such mortgage, security interest or lien shall be automatically subordinate to said Drainage Easements and any and all easements, licenses and/or right-of-way, over, under or on the Drainage Lot granted and/or received pursuant to the Drainage Easements and/or this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Insured Mortgage shall be subordinate to any Drainage Easement, easement, lease, license or right-of-way granted over, under or on the Lot encumbered by said Insured Mortgage after said Insured Mortgage was Recorded, without the consent of the then holder of said Insured Mortgage.

11.04 Phased Development. Declarant is developing the Villages of La'i 'Ōpua in several phases. Declarant, however, does not represent, promise or warrant that any particular phase or additional Lots will be developed.

11.05 Ongoing Construction and Sales Activities. Construction activity by Declarant or other Developers may continue within the Villages of La'i 'Ōpua, as well as on properties adjacent to and in the vicinity of the Villages of La'i 'Ōpua. Such construction activity may result in the transmission, discharge or emission of surface water runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations and other annoyances, as well as pose certain risks of injury to Lessees and Lessees' Family, guests and invitees, and may limit Lessees' access to portions of the Villages of La'i 'Ōpua. In addition, Declarant's marketing and development activities, including the use of signs and extensive sales displays and activities, will continue in the Villages of La'i 'Ōpua until the lease of the last Lot in the Villages of La'i 'Ōpua. Declarant and such other Developers shall have an easement over and upon each Lessee's Lot and the Common Area and over the Villages of La'i 'Ōpua to construct Improvements for the Villages of La'i 'Ōpua and for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over the Villages of La'i 'Ōpua which are created by or result from such construction activities. Declarant and such other Developers may do such things as may be reasonably required in connection with the construction of such Improvements, including, but not limited to, grading; excavation; depositing fill material; installing drainage systems and landscaping; and installing sewer, water, electrical, gas, telephone, communications, television cable and other lines, equipment and facilities.

11.06 Steep Slopes. Each Lessee expressly acknowledges and agrees that there are slopes up to twenty (20) feet in height ("Steep Slopes") within the Villages of La'i 'Ōpua, located on adjacent to, or in the vicinity to, various Lots (the "Slope Lots"), which could pose a

potential danger to Lessee and such Lessee's Family, guests, invitees and their respective property. Accordingly, each Lessee of a Slope Lot hereby agrees to take all necessary precautions, including maintaining any fences or walls between the Slope Lot and the Steep Slope in a good and safe condition on a continuous basis, to protect such Lessee and such Lessee's Family, guests, invitees and their respective property from the dangers presented by the Steep Slope. Lessees of the Slope Lots shall not hold DHHL, Declarant, any Developer or their respective employees, agents, attorneys or representatives, liable for, and hereby release DHHL, Declarant, all other Developers and their respective employees, agents, attorneys and representatives, from, and intentionally waive, any and all claims for damages or losses resulting from risks, nuisances, personal injuries, or other losses, damages or claims which result from, or relate to, the Steep Slope located within, or adjacent to, and on or around, the Slope Lots. Each Lessee of a Slope Lot shall indemnify, defend and hold harmless DHHL, Declarant, such other Developers and their respective employees, agents, attorneys and representatives from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from the Steep Slope on, or in proximity to, such Lessee's Lot.

11.07 Rights of Access and Easements. As fee simple owner of the Property, DHHL has and does hereby reserve unto itself, Declarant and any other Developer, and their respective successors and assigns, easements and other rights for access purposes over each Lot and the Common Area in the Villages of La'i 'Ōpua (specifically including without limitation, access to all property adjoining the Villages of La'i 'Ōpua), for access, drainage, landscaping, water, sewer, electrical, gas, telephone, cable television, communications and other purposes, to complete the construction of the subdivision Improvements within the Villages of La'i 'Ōpua, and to construct access, drainage, landscaping, water, sewer, electrical, gas, telephone, cable television, communication and other facilities over, under, across, along and through the Property, together with the right to designate easements, leases and/or licenses for the aforesaid purposes, if necessary or desired, and to grant to Declarant, a Developer, the Association, the State of Hawaii, the County of Hawaii, any other appropriate Governmental Agency, and/or any public or private utility or other person or entity, easements, leases and/or licenses for any such purposes over, under, across, along and through the Property, including the Lots and Common Area, under the usual terms and conditions required by the grantee of such easement, lease and/or license rights. Except as necessary to enable DHHL, Declarant or other Developer to complete the subdivision Improvements in the Villages of La'i 'Ōpua, such easement, lease and/or license rights must be exercised in such manner as to not unreasonably interfere with the Lessee's use of any Residence located on such Lessee's Lot. In connection with the installation, maintenance or repair of any facilities pursuant to any of said easements, leases and/or licenses, the land shall be promptly restored by and at the expense of the person owning and exercising such easement, lease and/or license rights to substantially the condition of the land immediately prior to the exercise thereof. Each Lessee and the Association do hereby consent to such reservation and exercise of such rights and to the designation and granting of such easements, leases and/or licenses and to all the conditions relating thereto and consequences thereof, and agrees to execute at the request of DHHL, Declarant and Developer such documents and instruments and to do such other things as may be necessary or convenient to effect the same. Each Lessee and the Association do hereby appoint DHHL, Declarant and such Developer and their respective successors and assigns, as such Lessee's and Association's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do all such things on such Lessee's and Association's behalf to effect the same, which grant of such

power, being coupled with an interest, is irrevocable for the term of such other instruments, and shall not be affected by the disability of any party or parties. In addition, any lender or lien holder which obtains a mortgage, security interest or other liens encumbering a Lot or Common Area, or any interest therein, by virtue of obtaining such mortgage, security interest or lien, agrees that such mortgage, security interest or lien shall be automatically subordinate to all such easements, licenses and/or right-of-way, over, under or on the Lot or Common Area granted and/or received pursuant to this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Insured Mortgage shall be subordinate to any such easement, license or right-of-way granted over, under or on the Lot encumbered by said Insured Mortgage after said Insured Mortgage was Recorded, without the consent of the then holder of said Insured Mortgage.

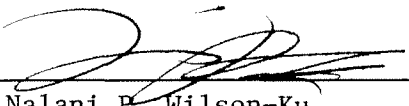
11.08 Right of DHHL to Create or Cancel Easements. As the fee simple owner of the Property, DHHL shall at all times have, and hereby reserves, the right to create, grant and convey easements, leases and licenses over, under, into and upon any portion of the Property, including the Lots and Common Area, for the benefit of the Villages of La'i 'Ōpua, any Lessee, any Governmental Agency, Exempt Organization, public utility or private business or to cancel any existing easement, lease or license; provided, however, that no Insured Mortgage shall be subordinate to any newly created easement, lease or license granted over any Lot encumbered by an Insured Mortgage after said Insured Mortgage was Recorded, without the consent of the then holder of said Insured Mortgage. Any newly created easement, lease or license or the cancellation of any easement, lease or license shall not substantially and materially affect the use of any the Residence on any Lot or any Improvement on the Common Area.

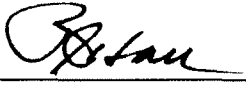
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IN WITNESS WHEREOF, Declarant has executed this Declaration this day 11 of May, 2011.

APPROVED:

State of Hawai'i  
DEPARTMENT OF HAWAIIAN HOME LANDS

  
\_\_\_\_\_  
Nalani P. Wilson-Ku  
Deputy Attorney General

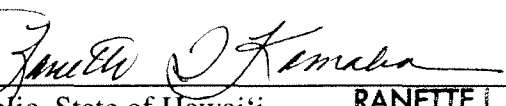
By   
\_\_\_\_\_  
Printed Name: Robert J. Hall  
Its: Deputy

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

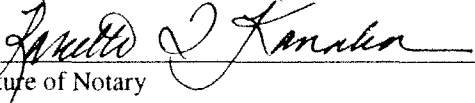
On this 11<sup>th</sup> day of May, 2011, before me appeared Robert J. Hall, to me personally known, who being by me duly sworn or affirmed, did say that he is the Deputy of the DEPARTMENT OF HAWAIIAN HOME LANDS, and that said instrument was signed in behalf of said DEPARTMENT OF HAWAIIAN HOME LANDS by authority of the Hawaiian Homes Commission; and said Deputy acknowledged said instrument to be the free act and deed of said DEPARTMENT OF HAWAIIAN HOME LANDS.

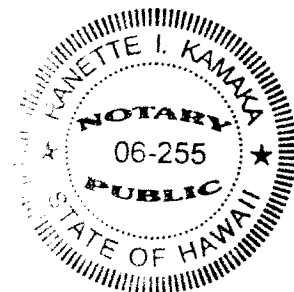
Name:   
Notary Public, State of Hawai'i RANETTE I. KAMAKA  
My commission expires: 5/7/2014

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Amended and Restated Declaration of Covenants, Conditions and Restrictions of Village of La'i Opua  
Document Date: 5/11/2011

No. of Pages: 73 Jurisdiction: 1st Circuit  
(in which notarial act is performed)

  
\_\_\_\_\_  
Signature of Notary Date of Certificate  
RANETTE I. KAMAKA  
Printed Name of Notary



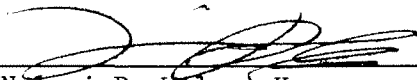
(Official Stamp or Seal)


## JOINDER AND AUTHORIZATION

The Department of Hawaiian Homelands, as the Declarant under the Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua executed on April 29, 1998, and recorded at the Bureau of Conveyances of the State of Hawaii as Document Nos. 98-069877 through 98-069878, as amended ("Declaration"), and undertaking, pursuant to Section 7.01 of said Declaration, the functions of the Villages of La'i 'Ōpua Association, which creation has been deferred, hereby joins into, and authorizes, this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Villages of La'i 'Ōpua pursuant to Section 9.01 of said Declaration.

APPROVED:

State of Hawai'i  
DEPARTMENT OF HAWAIIAN HOME LANDS

  
\_\_\_\_\_  
Nālanī P. Wilson-Ku  
Deputy Attorney General

By   
\_\_\_\_\_  
Printed Name: Robert J. Hall  
Its: Deputy

"DHHL" and "Declarant"



STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 14th day of May, 2011, before me appeared Robert J. Hall, to me personally known, who being by me duly sworn or affirmed, did say that he is the Deputy of the DEPARTMENT OF HAWAIIAN HOME LANDS, and that said instrument was signed in behalf of said DEPARTMENT OF HAWAIIAN HOME LANDS by authority of the Hawaiian Homes Commission; and said Deputy acknowledged said instrument to be the free act and deed of said DEPARTMENT OF HAWAIIAN HOME LANDS.

Name: Ranette I. Kamaka  
Notary Public, State of Hawai'i RANETTE I. KAMAKA  
My commission expires: 5/7/2014

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

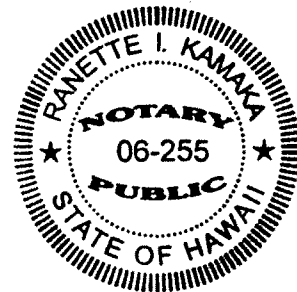
Document Identification or Description: Amended and Restated  
Declaration of Covenants, Conditions and Restrictions of  
Villages of La'i O Pua Document Date: 5/11/11  
No. of Pages: 73 Jurisdiction: 1st Circuit  
(in which notarial act is performed)

Signature of Notary

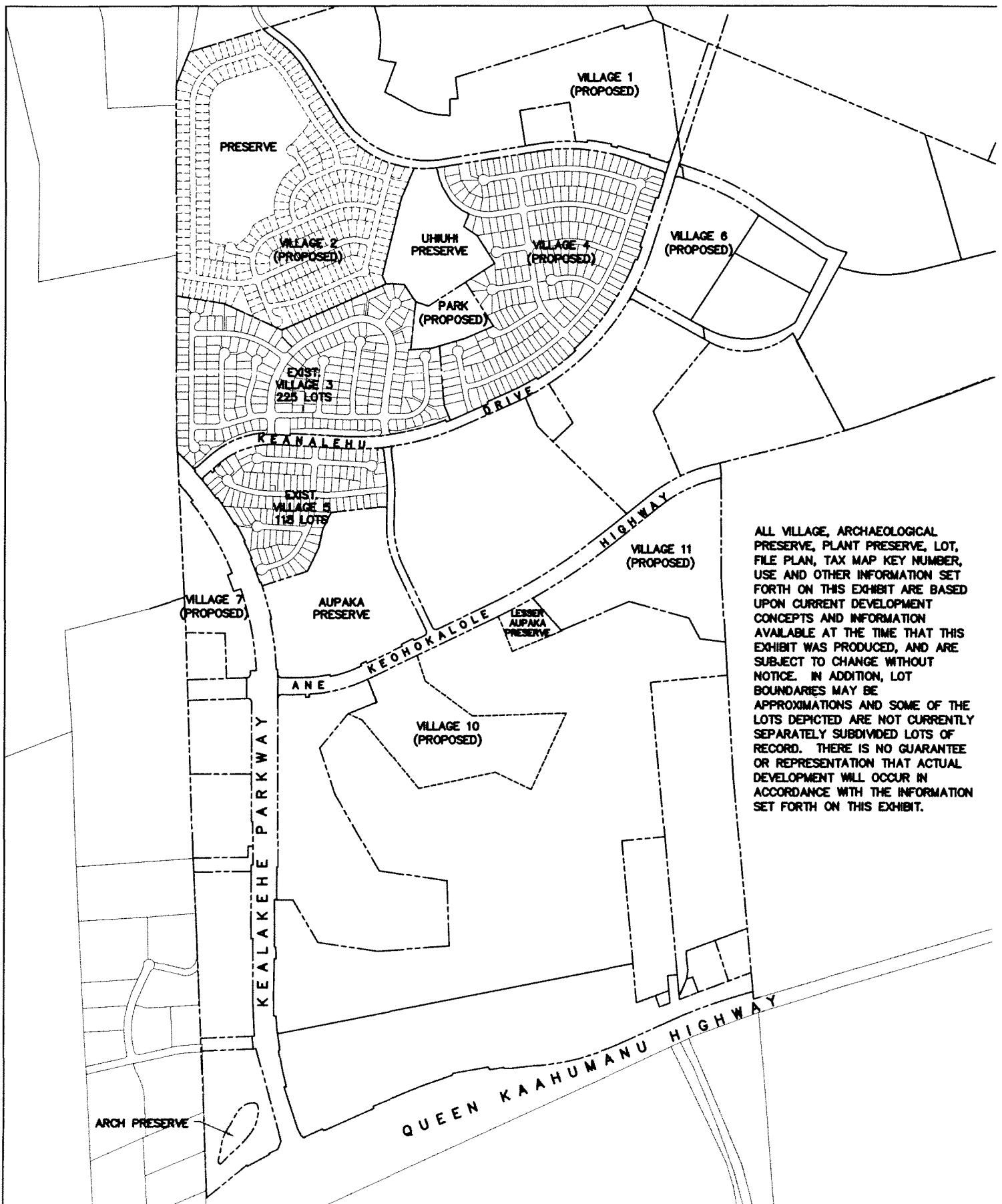
Date of Certificate

RANETTE I. KAMAKA

Printed Name of Notary



(Official Stamp or Seal)



ALL VILLAGE, ARCHAEOLOGICAL PRESERVE, PLANT PRESERVE, LOT, FILE PLAN, TAX MAP KEY NUMBER, USE AND OTHER INFORMATION SET FORTH ON THIS EXHIBIT ARE BASED UPON CURRENT DEVELOPMENT CONCEPTS AND INFORMATION AVAILABLE AT THE TIME THAT THIS EXHIBIT WAS PRODUCED, AND ARE SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION, LOT BOUNDARIES MAY BE APPROXIMATIONS AND SOME OF THE LOTS DEPICTED ARE NOT CURRENTLY SEPARATELY SUBDIVIDED LOTS OF RECORD. THERE IS NO GUARANTEE OR REPRESENTATION THAT ACTUAL DEVELOPMENT WILL OCCUR IN ACCORDANCE WITH THE INFORMATION SET FORTH ON THIS EXHIBIT.



NORTH

SCALE IN FEET

0 1000' 2000'  
1"=1000'

## EXHIBIT "A": VILLAGES OF LA'I 'ŌPUA

SOURCE:  
LAND USE BASE MAP FILE  
FROM COMMUNITY PLANNING, INC.  
DATED MAY 1994

APRIL 2011

## EXHIBIT "B-1"

### DESCRIPTION OF VILLAGE III

#### I. Private Area Lots:

##### A. File Plan 2237

Those parcels of land situated at Kealakehe, North Kona, Island of Hawaii, Hawaii, being a portion of the Government Land of Kealakehe, being also all the following lots of the Villages of Laiopua, as shown on File Plan 2237 filed at the Bureau of Conveyances of the State of Hawaii:

LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA
1	5,978 sq. ft.	26	6,080 sq. ft.	51	6,001 sq. ft.	76	6,895 sq. ft.
2	5,993 sq. ft.	27	6,070 sq. ft.	52	6,001 sq. ft.	77	13,415 sq. ft.
3	5,137 sq. ft.	28	6,059 sq. ft.	53	6,001 sq. ft.	78	8,916 sq. ft.
4	5,188 sq. ft.	29	6,049 sq. ft.	54	6,001 sq. ft.	79	8,308 sq. ft.
5	5,470 sq. ft.	30	6,351 sq. ft.	55	6,001 sq. ft.	80	7,271 sq. ft.
6	6,364 sq. ft.	31	10,034 sq. ft.	56	7,892 sq. ft.	81	7,672 sq. ft.
7	6,313 sq. ft.	32	7,085 sq. ft.	57	9,090 sq. ft.	82	8,029 sq. ft.
8	6,539 sq. ft.	33	6,865 sq. ft.	58	6,859 sq. ft.	83	8,766 sq. ft.
9	9,028 sq. ft.	34	9,025 sq. ft.	59	8,605 sq. ft.	84	7,520 sq. ft.
10	7,965 sq. ft.	35	9,568 sq. ft.	60	9,539 sq. ft.	85	7,500 sq. ft.
11	5,078 sq. ft.	36	8,601 sq. ft.	61	10,662 sq. ft.	86	12,121 sq. ft.
12	5,111 sq. ft.	37	6,000 sq. ft.	62	6,000 sq. ft.	87	9,962 sq. ft.
13	7,566 sq. ft.	38	6,000 sq. ft.	63	6,000 sq. ft.	88	8,345 sq. ft.
14	7,038 sq. ft.	39	6,000 sq. ft.	64	6,000 sq. ft.	89	10,220 sq. ft.
15	6,212 sq. ft.	40	6,000 sq. ft.	65	6,256 sq. ft.	90	9,609 sq. ft.
16	6,040 sq. ft.	41	6,000 sq. ft.	66	6,273 sq. ft.	91	9,011 sq. ft.
17	6,019 sq. ft.	42	6,000 sq. ft.	67	9,305 sq. ft.	92	8,886 sq. ft.
18	6,019 sq. ft.	43	6,000 sq. ft.	68	7,323 sq. ft.	93	9,363 sq. ft.
19	6,007 sq. ft.	44	6,000 sq. ft.	69	7,139 sq. ft.	94	9,699 sq. ft.
20	6,007 sq. ft.	45	6,000 sq. ft.	70	7,555 sq. ft.	95	8,270 sq. ft.
21	6,007 sq. ft.	46	8,600 sq. ft.	71	6,473 sq. ft.	96	8,128 sq. ft.
22	6,007 sq. ft.	47	8,299 sq. ft.	72	9,181 sq. ft.	97	7,587 sq. ft.
23	6,006 sq. ft.	48	6,463 sq. ft.	73	7,192 sq. ft.	98	6,994 sq. ft.
24	6,006 sq. ft.	49	6,201 sq. ft.	74	7,938 sq. ft.	99	6,498 sq. ft.
25	6,061 sq. ft.	50	6,201 sq. ft.	75	9,362 sq. ft.	100	6,919 sq. ft.

**B. File Plan 2243**

Those parcels of land situated at Kealakehe, North Kona, Island of Hawaii, Hawaii, being a portion of the Government Land of Kealakehe, being also all the following lots of the Villages of Laiopua, as shown on File Plan 2243 filed at the Bureau of Conveyances of the State of Hawaii:

LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA
1	6,198 sq. ft.	32	6,144 sq. ft.	63	6,482 sq. ft.	94	7,985 sq. ft.
2	6,006 sq. ft.	33	9,083 sq. ft.	64	6,470 sq. ft.	95	11,409 sq. ft.
3	6,343 sq. ft.	34	11,818 sq. ft.	65	8,388 sq. ft.	96	8,168 sq. ft.
4	6,610 sq. ft.	35	15,010 sq. ft.	66	7,022 sq. ft.	97	8,389 sq. ft.
5	6,599 sq. ft.	36	7,029 sq. ft.	67	8,126 sq. ft.	98	6,636 sq. ft.
6	6,599 sq. ft.	37	8,092 sq. ft.	68	6,540 sq. ft.	99	6,400 sq. ft.
7	6,599 sq. ft.	38	8,328 sq. ft.	69	6,540 sq. ft.	100	6,500 sq. ft.
8	9,118 sq. ft.	39	8,566 sq. ft.	70	6,540 sq. ft.	101	6,200 sq. ft.
9	8,575 sq. ft.	40	8,196 sq. ft.	71	6,540 sq. ft.	102	6,200 sq. ft.
10	8,152 sq. ft.	41	7,841 sq. ft.	72	6,540 sq. ft.	103	6,200 sq. ft.
11	7,562 sq. ft.	42	8,490 sq. ft.	73	6,540 sq. ft.	104	6,200 sq. ft.
12	7,501 sq. ft.	43	7,753 sq. ft.	74	6,540 sq. ft.	105	6,245 sq. ft.
13	7,501 sq. ft.	44	6,355 sq. ft.	75	6,130 sq. ft.	106	8,305 sq. ft.
14	7,501 sq. ft.	45	6,231 sq. ft.	76	6,290 sq. ft.	107	6,707 sq. ft.
15	5,531 sq. ft.	46	6,071 sq. ft.	77	5,347 sq. ft.	108	10,545 sq. ft.
16	5,393 sq. ft.	47	6,424 sq. ft.	78	6,117 sq. ft.	109	11,125 sq. ft.
17	5,245 sq. ft.	48	6,424 sq. ft.	79	5,646 sq. ft.	110	7,440 sq. ft.
18	5,073 sq. ft.	49	6,424 sq. ft.	80	7,319 sq. ft.	111	7,558 sq. ft.
19	4,758 sq. ft.	50	6,424 sq. ft.	81	8,772 sq. ft.	112	7,423 sq. ft.
20	4,851 sq. ft.	51	7,069 sq. ft.	82	7,013 sq. ft.	113	8,111 sq. ft.
21	5,065 sq. ft.	52	9,443 sq. ft.	83	6,313 sq. ft.	114	7,459 sq. ft.
22	4,884 sq. ft.	53	7,986 sq. ft.	84	6,003 sq. ft.	115	7,413 sq. ft.
23	4,896 sq. ft.	54	7,236 sq. ft.	85	6,000 sq. ft.	116	9,090 sq. ft.
24	5,265 sq. ft.	55	10,036 sq. ft.	86	6,000 sq. ft.	117	7,259 sq. ft.
25	5,239 sq. ft.	56	10,209 sq. ft.	87	6,012 sq. ft.	118	9,654 sq. ft.
26	5,668 sq. ft.	57	6,140 sq. ft.	88	9,643 sq. ft.	119	10,535 sq. ft.
27	6,754 sq. ft.	58	10,087 sq. ft.	89	9,295 sq. ft.	120	10,985 sq. ft.
28	6,100 sq. ft.	59	6,482 sq. ft.	90	7,325 sq. ft.	121	10,090 sq. ft.
29	6,034 sq. ft.	60	6,482 sq. ft.	91	8,562 sq. ft.	122	7,089 sq. ft.
30	11,379 sq. ft.	61	6,482 sq. ft.	92	9,331 sq. ft.	123	7,727 sq. ft.
31	6,257 sq. ft.	62	6,482 sq. ft.	93	6,599 sq. ft.	124	7,658 sq. ft.
						125	7,501 sq. ft.

## II. Common Area:

### A. File Plan 2237

LOT NO.	AREA	PURPOSE
103	16,177 sq. ft.	Community Center
104	17,252 sq. ft.	Landscape

### B. File Plan 2243

LOT NO.	AREA	PURPOSE
126	34,577 sq. ft.	Landscape
127	13,105 sq. ft.	Landscape

## III. Special Use Area Lots:

### A. File Plan 2237

LOT NO.	AREA	PURPOSE
101	11,259 sq. ft.	Plant Preserve and Mini-Plant Preserve
102	5,086 sq. ft.	Communications Facility
105	13,262 sq. ft.	Archaeological Preserve
106	19,137 sq. ft.	Plant Preserve and Mini-Plant Preserve
107	41,310 sq. ft.	Roadway
108	27,246 sq. ft.	Roadway
109	24,904 sq. ft.	Roadway
110	30,168 sq. ft.	Roadway
111	56,295 sq. ft.	Roadway
112	34,400 sq. ft.	Roadway
113	13,637 sq. ft.	Roadway
Easement 5	24,013 sq. ft.	Perimeter Fence

### B. File Plan 2243

LOT NO.	AREA	PURPOSE
128	105,546 sq. ft.	Roadway
129	12,846 sq. ft.	Roadway
130	37,076 sq. ft.	Roadway
131	24,352 sq. ft.	Roadway
132	31,017 sq. ft.	Roadway
133	23,456 sq. ft.	Roadway
Easement 5 (Map 2237)	24,013 sq. ft.	Perimeter Fence

## EXHIBIT "B-2"

### DESCRIPTION OF VILLAGE 5

#### IV. Private Area Lots:

Those parcels of land situated at Kealakehe, North Kona, Island of Hawaii, Hawaii, being a portion of the Government Land of Kealakehe, being also all the following lots of the Villages of Laiohua, as shown on File Plan 2479 filed at the Bureau of Conveyances of the State of Hawaii:

LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA	LOT NO.	AREA
1	10,476 sq. ft.	31	6,047 sq. ft.	61	6,003 sq. ft.	92	6,002 sq. ft.
2	5,999 sq. ft.	32	6,013 sq. ft.	62	6,003 sq. ft.	93	6,009 sq. ft.
3	6,241 sq. ft.	33	6,051 sq. ft.	63	6,023 sq. ft.	94	7,739 sq. ft.
4	6,960 sq. ft.	34	6,094 sq. ft.	64	6,998 sq. ft.	95	7,909 sq. ft.
5	9,314 sq. ft.	35	7,451 sq. ft.	65	6,948 sq. ft.	96	6,875 sq. ft.
6	9,992 sq. ft.	36	11,507 sq. ft.	66	7,041 sq. ft.	97	6,875 sq. ft.
7	8,790 sq. ft.	37	7,012 sq. ft.	67	7,135 sq. ft.	98	6,909 sq. ft.
8	8,494 sq. ft.	38	6,654 sq. ft.	68	7,229 sq. ft.	99	6,375 sq. ft.
9	7,749 sq. ft.	39	6,013 sq. ft.	69	6,687 sq. ft.	100	6,250 sq. ft.
10	6,417 sq. ft.	40	6,007 sq. ft.	71	7,879 sq. ft.	101	6,022 sq. ft.
11	6,152 sq. ft.	41	6,023 sq. ft.	72	7,845 sq. ft.	102	7,391 sq. ft.
12	8,617 sq. ft.	42	6,040 sq. ft.	73	7,812 sq. ft.	103	7,137 sq. ft.
13	7,538 sq. ft.	43	6,009 sq. ft.	74	6,779 sq. ft.	104	8,768 sq. ft.
14	6,011 sq. ft.	44	6,000 sq. ft.	75	9,084 sq. ft.	105	12,196 sq. ft.
15	6,404 sq. ft.	45	6,000 sq. ft.	76	10,638 sq. ft.	106	12,530 sq. ft.
16	6,207 sq. ft.	46	6,021 sq. ft.	77	7,447 sq. ft.	107	7,390 sq. ft.
17	6,043 sq. ft.	47	6,200 sq. ft.	78	6,229 sq. ft.	108	7,298 sq. ft.
18	6,043 sq. ft.	48	6,000 sq. ft.	79	8,933 sq. ft.	109	7,472 sq. ft.
19	6,043 sq. ft.	49	6,000 sq. ft.	80	6,236 sq. ft.	110	6,516 sq. ft.
20	6,043 sq. ft.	50	6,000 sq. ft.	81	6,017 sq. ft.	111	6,096 sq. ft.
21	6,043 sq. ft.	51	6,009 sq. ft.	82	8,165 sq. ft.	112	6,042 sq. ft.
22	9,129 sq. ft.	52	6,089 sq. ft.	83	8,682 sq. ft.	113	9,406 sq. ft.
23	10,069 sq. ft.	53	6,945 sq. ft.	84	6,830 sq. ft.	114	10,376 sq. ft.
24	7,823 sq. ft.	54	10,322 sq. ft.	85	6,184 sq. ft.	115	7,192 sq. ft.
25	6,723 sq. ft.	55	6,077 sq. ft.	86	6,002 sq. ft.	116	7,273 sq. ft.
26	7,069 sq. ft.	56	6,090 sq. ft.	87	6,045 sq. ft.	117	7,545 sq. ft.
27	7,288 sq. ft.	57	6,403 sq. ft.	88	6,034 sq. ft.	118	9,942 sq. ft.
28	6,000 sq. ft.	58	6,002 sq. ft.	89	6,013 sq. ft.		
29	6,000 sq. ft.	59	6,003 sq. ft.	90	6,013 sq. ft.		
30	6,000 sq. ft.	60	6,003 sq. ft.	91	6,000 sq. ft.		

**V. Common Area:**

<b>EASEMENT NO.</b>	<b>AREA</b>	<b>AFFECTING LOT(S)</b>	<b>PURPOSE</b>
6	1,276	22	Planting Screen
9	666	23	Mailbox
14	1,080	37 and 38	Drain
16	9,741	35 to 46, inclusive	Planting Screen
25	8,591	47 to 54, inclusive, 76 to 78, inclusive	Planting Screen
42	78	1 and 118	Drain
41	11,416	1, 79 to 83, inclusive, 105, 106, 118	Planting Screen
43	3,178	106 to 113, inclusive	Drain

**VI. Special Use Area Lots:**

<b>LOT NO.</b>	<b>AREA</b>	<b>PURPOSE</b>
70	1,800 sq. ft.	Plant Preserve and Mini-Plant Preserve
119	66,168 sq. ft.	Roadway
120	22,856 sq. ft.	Roadway
121	23,060 sq. ft.	Roadway
122	34,462 sq. ft.	Roadway
123	28,412 sq. ft.	Roadway
124	19,643 sq. ft.	Roadway

**VII. Cotenancy Areas:**

<b>EASEMENT NO.</b>	<b>BENEFITED/AFFECTED LOTS</b>	<b>PURPOSE</b>
35	104	Common Access
36	105	Common Access



ALL VILLAGE, ARCHAEOLOGICAL PRESERVE, PLANT PRESERVE, LOT, FILE PLAN, TAX MAP KEY NUMBER, USE AND OTHER INFORMATION SET FORTH ON THIS EXHIBIT ARE BASED UPON CURRENT DEVELOPMENT CONCEPTS AND INFORMATION AVAILABLE AT THE TIME THAT THIS EXHIBIT WAS PRODUCED, AND ARE SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION, LOT BOUNDARIES MAY BE APPROXIMATIONS AND SOME OF THE LOTS DEPICTED ARE NOT CURRENTLY SEPARATELY SUBDIVIDED LOTS OF RECORD. THERE IS NO GUARANTEE OR REPRESENTATION THAT ACTUAL DEVELOPMENT WILL OCCUR IN ACCORDANCE WITH THE INFORMATION SET FORTH ON THIS EXHIBIT.

Archaeological Preserve  
Lot 105 as shown on File Plan 2237  
(TMK: (3) 7-4-022:105)  
Site # 13176

Preserve  
(TMK: (3) 7-4-021:016)  
Site Nos. 13185, 13219,  
13252 (Burial) and 13254

Archaeological  
Preserve

Lot 1 as shown on file Plan 2128  
(TMK: (3) 7-4-020:001)  
Site #13253 (Burials)

Aupaka  
Preserve

Village 10  
(Proposed)

Lesser  
Aupaka  
Preserve

Village 11  
(Proposed)

Village 5  
(Existing)

Village 3  
(Existing)

Village 2  
(Proposed)

Archaeological  
Preserve  
(Burial)

Archaeological  
Preserve  
Site #13204

Uhihi  
Preserve

Park  
(Proposed)

Village 4  
(Proposed)

Village 1  
(Proposed)

Village 6  
(Proposed)

Archaeological Preserve  
(Burial) Site #13210

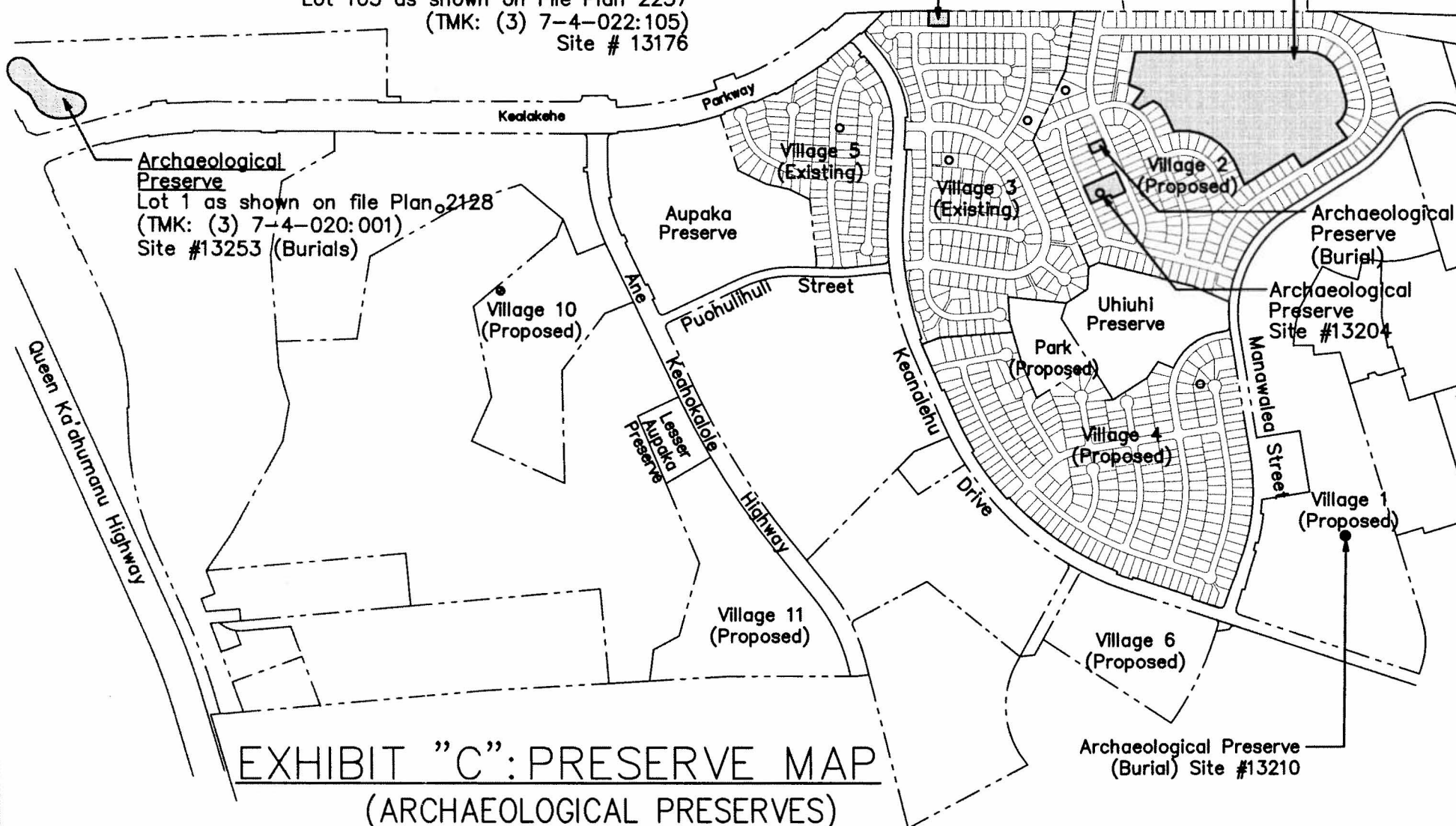
## EXHIBIT "C": PRESERVE MAP (ARCHAEOLOGICAL PRESERVES)

### ORIENTATION MAP LEGEND

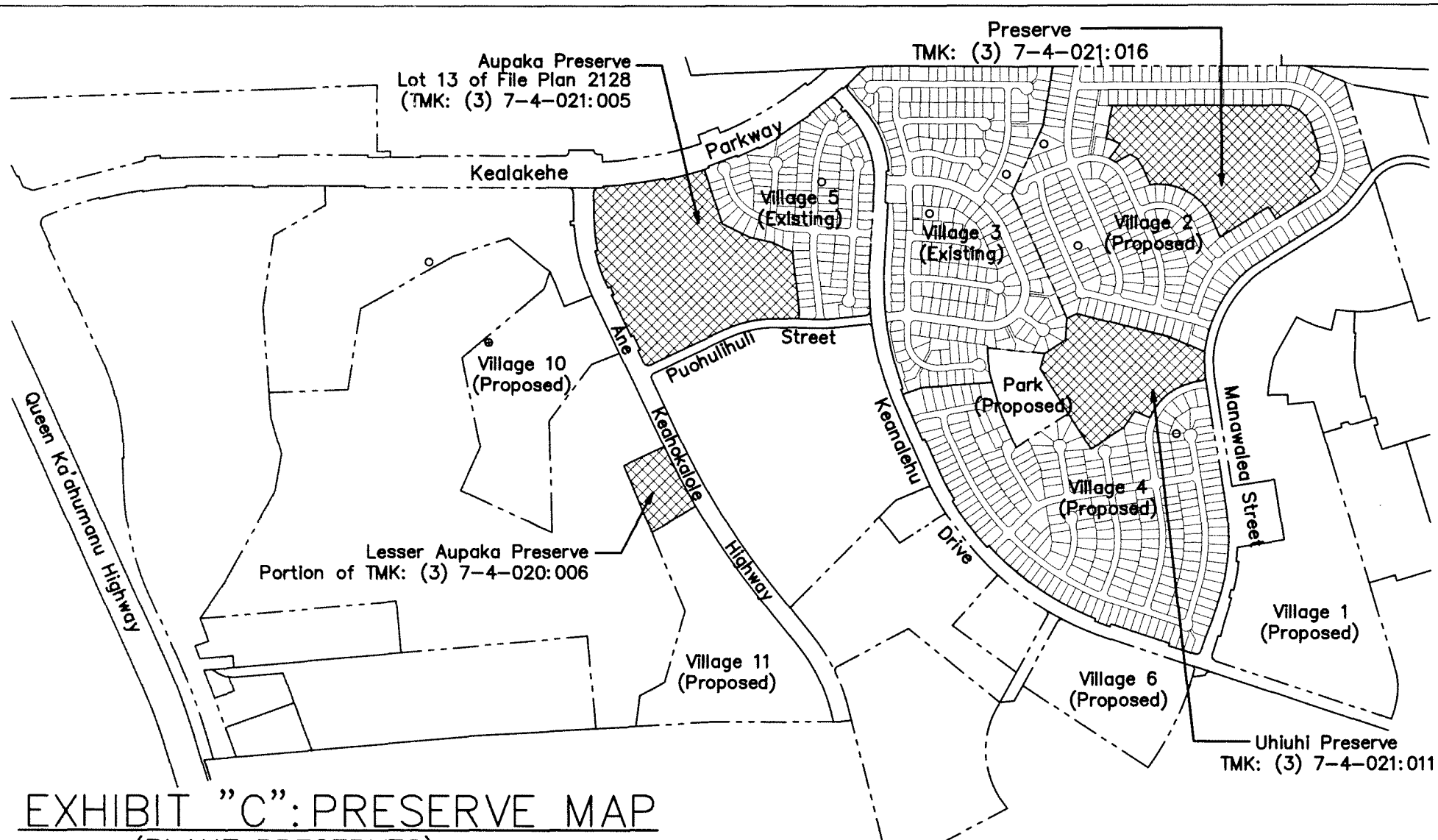
ARCHAEOLOGICAL PRESERVE

SHEET 1 OF 2

NOT TO SCALE







## EXHIBIT "C": PRESERVE MAP

(PLANT PRESERVES)

SHEET 2 OF 2

NOT TO SCALE

ALL VILLAGE, ARCHAEOLOGICAL PRESERVE, PLANT PRESERVE, LOT, FILE PLAN, TAX MAP KEY NUMBER, USE AND OTHER INFORMATION SET FORTH ON THIS EXHIBIT ARE BASED UPON CURRENT DEVELOPMENT CONCEPTS AND INFORMATION AVAILABLE AT THE TIME THAT THIS EXHIBIT WAS PRODUCED, AND ARE SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION, LOT BOUNDARIES MAY BE APPROXIMATIONS AND SOME OF THE LOTS DEPICTED ARE NOT CURRENTLY SEPARATELY SUBDIVIDED LOTS OF RECORD. THERE IS NO GUARANTEE OR REPRESENTATION THAT ACTUAL DEVELOPMENT WILL OCCUR IN ACCORDANCE WITH THE INFORMATION SET FORTH ON THIS EXHIBIT.

### ORIENTATION MAP LEGEND



PLANT PRESERVE



MINI PLANT PRESERVE

### MINI PLANT PRESERVES ARE KNOWN TO BE LOCATED WITHIN LOTS CURRENTLY IDENTIFIED AS:

VILLAGE 2 LOTS: Lot 23 as shown on File Plan 2128 (Tax Map Key (3) 7-4-021:015)  
 VILLAGE 3 LOTS: Lots 101 and 106 as shown on File Plan 2237 (Tax Map Keys (3) 7-4-022:101 and 106)  
 VILLAGE 4 LOTS: Lot 20 as shown on File Plan 2128 (Tax Map Key (3) 7-4-021:012)  
 VILLAGE 5 LOTS: Lot 70 as shown on File Plan 2479 (Tax Map Key (3) 7-4-027:070)  
 VILLAGE 9 LOTS: Lot 4 as shown on File Plan 2128 (Tax Map Key (3) 7-4-020:004)  
 VILLAGE 10 LOTS: Lot 5 as shown on File Plan 2128 (Tax Map Key (3) 7-4-020:005)

**DRAFT**

# Villages of La'i'opua

Kealakehe  
North Kona, Hawaii

## *Modifications Rules and Guidelines*

Printed: December 30, 1997

A Master Planned Community  
by the State of Hawaii  
Housing Finance and Development Corporation

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**I. Introduction**

- A. These Modifications Committee Rules and Guidelines are authorized by Article 6 of the Declaration of Covenants, Conditions and Restrictions of Villages of La'i'opua (Declaration) and will sometimes be referred to in this document as the Rules and Guidelines.

**II. Definitions**

- A. Air Conditioners: Includes both window or wall mounted units and split system units. The condenser and all associated piping for a split system shall be considered as part of the air conditioner.
- B. Association: Villages of La'i'opua, a Hawaii nonprofit corporation to be organized pursuant to the Declaration, its successors and assigns.
- C. Covenant Enforcement Committee: The committee, if any, appointed by the Association Board of Directors to oversee and establish policies and procedures with respect to the enforcement of the provisions of the Declaration. If no such committee is specifically appointed, the Board shall act as the Covenant Enforcement Committee.
- D. Covenant Manager: The person, if any, appointed by the Association Board of Directors to enforce the provisions of the Declaration. Until and unless someone is appointed, the Managing Agent may act as the Covenant Manager.
- E. Declarant: Housing Finance and Development Corporation, a body corporate and politic of the State of Hawaii, and its successors and assigns.
- F. Declaration: The Declaration of Covenants, Conditions and Restrictions of Villages of La'i'opua.
- G. Excavation: Any disturbance of the surface of land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen (18) inches.
- H. Fill: Any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches.
- I. Garage: A garage for a motor vehicle, including a carport or similar outbuilding appurtenant to a Residence, whether or not connected to the Residence.
- J. Improvements: All buildings, outbuildings, grading, roads, drainage facilities, driveways, parking areas, loading areas, screening walls and barriers, fences, retaining walls, poles, signs, water lines, sewer facilities and pump stations, electrical and gas transmission and distribution facilities, irrigation facilities, hedges, windbreaks, plantings, planted trees and shrubs, ponds, exterior illumination, and all other structures, installations and landscaping of any type or kind, whether on, above or below the surface of the land.
- K. Landscape: To adorn, improve, or arrange the grounds attractively by clearing, grading, contouring the land and planting grass, ground cover, flowers, shrubs, and/or trees.
- L. Light Source Visibility: shall mean visibility of the filament of the light source from neighboring property.
- M. Lot: Any residential Lot within the Private Area designated for residential use on a subdivision map or any Apartment in a Condominium within the Private

- Area.
- N. Modifications Committee (MC): The Committee created pursuant to the Declaration.
- O. Modifications Rules and Guidelines (Rules and Guidelines): These Modifications Rules and Guidelines adopted by the MC pursuant to the Declaration.
- P. New Construction Committee (NCC): The Committee created pursuant to the Declaration.
- Q. New Construction Design Handbook (Handbook): The design guidelines and procedures adopted by the New Construction Committee pursuant to the Declaration.
- R. Owner: A person, corporation, partnership or other legal entity who is the beneficial owner of the fee simple or leasehold interest in any Lot, including the purchaser of a Lot under an agreement of sale; provided however, that:
1. For the purposes of limitations and restrictions set forth in Article 5 of the Declaration, Owner shall not include Declarant or Developer with respect to any Lot owned by the Declarant or Developer;
  2. Owner shall include for the purposes of Article 5 of the Declaration, unless the context requires otherwise, the Family and lessees of any Owner.
- S. Residence: An Apartment or a single-family dwelling building on a Lot within the Private Area used for residential purposes, together with a Garage.
- T. Retaining Wall: Any structure constructed for the purpose of containing or supporting any embankment, Fill or other earthen form.
- U. Single-Family: shall mean one or more persons, all related by blood, marriage or legal adoption, living and cooking on the premises together as a single, non-profit housekeeping unit; or unrelated persons living and cooking on the premises as a single, non-profit unit; provided, however, that the number of persons living on the premises shall not exceed standards and requirements set forth by law.
- V. Structure: Anything above existing grade constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground. The term structure includes "building."
- W. Village: Each separate phase of the development of Villages of La'i'opua as designated by Declarant.
- X. Visible from Neighboring Property: shall mean, with respect to any given object or activity, that such object or activity is or would be in line of sight originating from any point six (6) feet above the adjoining property, excluding contiguous property owned by the owner of the property involved, but including common areas and streets, assuming that such adjoining property has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the property upon which such object or activity is located, whichever elevation is lower.
- Y. Visible from a Public Street: With respect to any given object or activity, that such object or activity is or would be visible from any point of a street fronting

the Lot or adjacent to the Lot.

### **III. Villages of La'i'opua Design Philosophy and Administration**

#### **A. Design Philosophy**

1. In a master-planned community, Owners have contractually agreed to surrender some of their freedom of expression in improving their properties, and have accepted an obligation to conform to architectural and landscaping standards established in accordance with the Declaration, New Construction Design Handbook (Handbook) and these Rules and Guidelines, in order to preserve and maintain the character of the community in which they have chosen to reside. These standards are protected by the Declaration for the ultimate benefit of all Owners and residents.

#### **B. Design Committees**

##### **1. New Construction Committee**

- a. There are two committees which are responsible for establishing and enforcing the design standards for Villages of La'i'opua. The New Construction Committee (NCC) has jurisdiction over all original construction in Villages of La'i'opua and has the primary task of assuring that all developers who create projects within Villages of La'i'opua conform to the Handbook. Individual Owners will have little or no contact with the NCC. The NCC consists of three to five members appointed by the Declarant under the Declaration so long as the Declarant owns any property within Villages of La'i'opua unless the Declarant specifically surrenders that right.

##### **2. Modifications Committee**

- a. The committee which has the greatest effect on the individual homeowners is the Modifications Committee (MC). The MC consists of three to five persons appointed by the Association. Members of the MC may include architects or similar professionals who are not Association members. The MC may delegate its authority as to a particular Village to the appropriate sub-association or committee. Such delegation may be revoked and jurisdiction reassumed by the MC at any time by written notice.
- b. The MC has the overall responsibility for preserving and maintaining architectural and landscaping standards with respect to alterations and additions to existing dwellings. The primary objective of the MC in meeting this responsibility is to ensure harmonious aesthetic relationships between individual buildings and their sites and to ensure compatibility of each unit and its Improvements with the architectural and landscaping standards which prevail within each Village and within Villages of La'i'opua as a whole. The MC cannot approve modifications which are not consistent with the Declaration, Handbook or Rules and Guidelines. The Rules and Guidelines may be amended by the

- MC from time to time but are subject to the approval of the NCC.
- c. The MC will attempt to accommodate the desires of individual Owners; but given its primary responsibility of maintaining and preserving the architectural and landscaping standards developed under the protection of the Declaration, Handbook and Rules and Guidelines, the MC can not approve designs and materials that, in its opinion, will have an adverse effect upon the architectural and landscaping standards of Villages of La'i'opua.
  - d. The decisions of the MC involve areas where individual impressions, personal preferences and subjective opinions may lead to individual Owners to disagree with some of the standards incorporated in this document. Nevertheless, the MC is charged with the responsibility of using its collective knowledge and experience to establish and maintain architectural standards which will balance the needs of the community and those of individual Owners and residents. The MC is also aware that plans and specifications do not always convey the true appearance of a particular design. The MC will seek to be equitable, objective and consistent in the procedures it uses for evaluating construction and landscaping proposals to see Declaration, standards in the Rules and Guidelines, and any relevant design requirements. The MC will also seek to ensure that the design and landscaping standards outlined in the Rules and Guidelines are interpreted and enforced in a uniform and consistent manner by the Covenant Manager and the Covenant Enforcement Committee for the ultimate benefit of all Owners and residents of La'i'opua as a whole.
  - e. From time to time, the MC may deem it appropriate to consider new and different designs and materials for use within its area of responsibility. The MC will strive to be reasonable and flexible in reviewing new design concepts and materials which can be harmoniously integrated with existing structures. The MC will not, however, approve designs or materials which are inconsistent with its existing architectural standards simply because such designs or materials are currently popular or considered fashionable. Experimental or avant garde designs or materials are unlikely to be approved.

**C. Limits of Liability**

1. Approval of plans by the MC is solely for the architectural design or scheme thereof and for conformance with the requirements of the Declaration, the Handbook, and these Rules and Guidelines. It shall be the Owner's responsibility to ensure that all modifications or additions comply with all applicable laws, statutes, ordinances, codes, rules and regulations.
2. No representations are made nor is any responsibility assumed by the Declarant, the Association, the NCC, or the MC regarding the structural



soundness of the work proposed or approved. It shall be the sole responsibility of the Owner and the Owner's architect or builder to examine the premises and to undertake adequate design for all Improvements or changes to be constructed and made on the Owner's property.

3. Neither the MC nor any of its consultants shall be responsible for the effects on the value of any property which result from modification to property due to MC approval.

**D. Other Codes, Laws, Rules and Ordinances**

1. Approval of plans does not modify or eliminate the Owner's obligation to comply with all existing laws, ordinances, rules and regulations, and as may be amended, or hereafter made by any governmental authorities or with such terms and conditions required under the Declaration, or any deed, lease, or mortgage. In case of conflict, the more stringent requirement shall apply.

**E. Architectural Review Procedures**

**1. General Process**

- a. The following procedures must be completed and approval granted by the MC prior to beginning construction for all additions or alterations to any unit subject to the Declaration which alter the exterior appearance of any residence or structure, including landscaping, walls and fences, and including the painting thereof. Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from the outside the Unit shall also be subject to approval. Owners are responsible for obtaining any necessary County building permits and for complying with all applicable codes, ordinances and regulations. Owners are also responsible for complying with all applicable governing documents and the rules, regulations, and procedures promulgated in accordance therewith by any Village association or committee having jurisdiction over the Lot and, in the case of condominium apartments, with the project's declaration of condominium property regime and the by-laws and house rules of the association of apartment owners. No application will be considered by the MC unless: 1) All required Village or condominium association approvals have been obtained prior to the submission of the application to the MC; and 2) Owner is a member in good standing having no outstanding violations of the Declaration, Handbook and these Rules and Guidelines.
- b. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and Improvements shall be submitted to the MC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the MC may consider

the quality of workmanship and design, harmony of external design with existing structures, topography, and finish grade elevation, among other things. Decisions of the MC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time. No approval shall be required to rebuild in accordance with originally approved plans and specifications.

- c. The fact that an owner has scheduled work, arranged financing, entered into a contract for materials or labor, received approval from a Village or condominium association or the County of Hawaii, or will suffer any alleged hardships shall not be a basis for modifications to the approval process required by the MC under the provisions of the Declaration and these Rules and guidelines.

**2. Step One**

- a. Submit one completed copy of "Villages of La'i'opua Application for MC Approval for Modifications, Additions, or Improvements" to the Association. Copies may be obtained from the managing agent.

**3. Step Two**

- a. Submit three copies each of the plot plan, and if applicable the building plan, for any Improvements which incorporate structures, concrete or masonry surfaces, or manmade materials such as walls, fences, walkways, slabs, gutters, downspouts.
  - (1) Plot Plan (Scale: 1 inch = 20 feet)
    - (a) The outline of the proposed modification should be clearly identified on the plot plan in order that the proposed modifications can be evaluated in relation to the existing Improvements.
  - (2) Building Plan (Scale: ¼ inch = 1 foot)
    - (a) Detail drawings which clearly show the Owner's proposed modifications must be provided. For instance, for walls or fences, adequately scaled sections and details of walls and proper identification of the location of these details on the plot plan are essential.
    - (b) Show plan (top view), all elevations (front, rear, and side views), and cross-sections. If the proposed structure is to be connected to an existing structure, drawings must show the relationship to the existing structure and a detailed cross-section of the point of connection must be provided.
    - (c) Building plans must include the type and finish of the exterior materials, which should usually match any existing structure's materials and colors. If the structure or structures are to be finished in a different

color, sample of both existing and proposed colors must be on file or provided with the application.

**4. Step Three**

- a. All application packages for MC approval must be accompanied by the appropriate processing fee. There is no fee required for regular maintenance projects such as repainting, re-roofing or projects which do not alter the exterior appearance of previously approved structures. A change of roofing materials must be approved by the MC on the permit form mentioned in Step 1, above, even in those cases where no permit processing fee is required.
- b. The following permit processing fees are subject to change without prior notice:
  - (1) Major Improvement Application Processing Fee: Fifty Dollars (\$50.00) for modifications or Improvements which significantly alter the primary dwelling or incorporate new structures or additions, for example, building additions or extensions, new wall or fence, adding a swimming pool, new driveway or patio slab, solar installation, storage. In general, this category includes but is not limited to those applications which require architectural consultation, a building permit and/or for multiple modifications or Improvements.
  - (2) Painting and Minor Improvement Application Processing Fee: Twenty Five Dollars (\$25.00), for example, window tinting, unenclosed air conditioning installation, sidewalks around a house, screen doors, landscape plans.
- c. The MC shall, in its sole discretion, determine the appropriate fee for each application. The above permit processing fees may be revised by the MC as deemed necessary at any time without notice. The current fee schedule is at any point in time is available from the managing agent.

**5. Step Four**

- a. The Covenant Manager shall review the Owner's modification application before sending the application to the MC.
- b. This pre-review will help to establish the scope of the proposed work intended by the Owner and assist the homeowner in preparing the proper documents needed to complete a modification request application
- c. At this pre-review, misunderstandings or misinterpretations of the modifications guidelines can be clarified in order for the homeowner to make necessary drawing or document changes before the application is forwarded to the MC or the architect and other consultants for review. Also, the pre-review will determine if a variance is required for the Owner's proposed modification and the proper additional information can be prepared by the

homeowner as required. The pre-review will serve to expedite the review process and also assists in understanding the homeowner's construction schedule and potential impact on adjacent units.

- d. Depending upon the complexity and the adequacy of the plans, the approval, approval with changes or disapproval of the MC shall be given in writing within thirty (30) days after submission of the application package and after the Owner's compliance with these Rules and Guidelines. If the plans are disapproved, the plans must then be revised to conform with MC design requirements and resubmitted for reconsideration and approval within 120 days in order to avoid additional application permit processing fees. Oral requests for approval or preliminary approval of proposed work that is subject to these rules and regulations will not be accepted, either in person or over the telephone.

**6. Step 5**

- a. If the proposed plans/modifications are approved or approved with changes, the Association's permit will be issued, and the applicant may then obtain any necessary permits or approvals as required by the County of Hawaii. The Association permits are good for 120 days after issue. If start of construction is delayed beyond this date, a new permit must be obtained and the Owner will be required to pay any applicable permit processing fees.

**IV. Modification Guidelines for Single-Family Residential Improvements**

**A. Accessory Structures**

**1. Built-In Barbecues**

Permanent barbecue and barbecue pits which are visible from a street or neighboring property will be considered on individual merit. Barbecue structures over 30 inches in height are not permitted in required yard setbacks.

**2. Dog Houses, Dog Runs, Shade Houses, Storage and Tool Sheds**

Dog houses, dog runs, shade houses, storage and tool sheds and other such structures over 30 inches in height shall not be permitted within a required setback.

**3. Mailboxes and Newspaper Tubes**

Mailboxes must be in compliance with post office regulations. Mailboxes and newspaper tubes are, preferably, constructed of material and painted a color compatible to the residential structure. Mailboxes and newspaper tubes do not require the approval of the MC.

**4. Party Tents and Temporary Structures**

Party tents and temporary structures such as lean-to's, luau enclosures, etc. may be erected without MC approval provided that the Owner shall not continue to use the structure beyond the special event for which it is

planned and expeditiously remove the tent or temporary structure after its use. Placement of any such structure on any Lot for any purpose longer than thirty days is not authorized.

**5. Tanks Above Grade**

- a. Tanks for the storage of cooking and heating gas or other tanks may be installed, as permitted by government laws and ordinances, provided they are adequately screened by fencing or landscaping such that they are not visible from a public street.
- b. This rule is in no way intended to mean that the Association or the MC assumes any responsibility for any hazards connected with tanks.

**B. Air Conditioners**

1. Air conditioning units shall be maintained at all times in a clean and attractive conditions and shall not be permitted to become unsightly.
2. No air conditioning equipment more than 30 inches in height is permitted in required yard setbacks.
3. Air Conditioners may be installed without MC approval provided they are not visible from a public street or a neighboring property and conform to the aforementioned rules.
4. In those cases where Air Conditioners will be visible from a neighboring property or from a public street, the Owner must screen the Air Conditioner from public view. No bare metal or conspicuous filter elements may be exposed. If the design of the installed Air Conditioner is such that filter elements may not be painted, the Owner is responsible for producing a design acceptable to the MC to screen or otherwise enclose the Air Conditioner in such a manner that it may be painted to blend with the mounting surface.

**C. Concrete Slabs and Walkways**

1. When reviewing a plan for a concrete slab, the MC shall consider the potential covering or enclosing of such slab to determine if such addition can be made without compromising the exterior of the dwelling.
2. In general, other concrete work such as walkways will be approved providing that slabs and walkways leave adequate room for landscaping within the property.
3. Ground termite treatment will be required under all concrete slabs.

**D. Extensions and Enclosures**

**1. Building Height, Stories and Massing**

- a. The maximum building height is 30 feet. Building height shall be measured from the lowest point of the finished ground surface adjacent to the building to the uppermost point of the building.
- b. Maximum number of stories is two plus a mezzanine loft. A mezzanine loft shall not exceed one third of the floor area of the story directly below.
- c. Any second story portion must be setback a minimum of 5 feet from the required front yard setback line. See Figure 6 - Single Family Dwelling Second Story Setback.

- d. It is recommended that views from upstairs, windows, decks or lanais into an adjacent or near neighbor's window or private yard should be buffered by landscaping, fences or walls.
- e. Building massing that steps down with the natural terrain is encouraged.

**2. Garage Doors**

- a. Garage doors shall be non-corrosive or treated ferrous metal panels with simulated wood grained sandwiched onto foam panels. Appearance must be compatible in appearance to other garage doors in the neighborhood.
- b. Garage doors shall be painted with approved colors which match the primary dwelling.
- c. An automatic garage door opener must be installed for garages set back less than 15 feet from the front property line.

**3. Match Existing Structure**

- a. In general, additions and enclosures shall have matching materials, details, colors and be in appropriate scale to the existing dwelling. Further, the architectural theme and general quality of the existing dwelling shall be maintained. Variances will be considered only to the extent of their conformance to these Rules and Guidelines.

**4. Parking Requirements**

- a. A two car carport or enclosed garage shall be required for all single-family dwellings.
- b. Garage doors, if provided for garages set back less than 15 feet from the front property line, shall have an automatic garage door opener.
- c. Whenever it is desired to enclose an existing garage or carport and convert its use to another purpose, provision must be made to construct covered parking elsewhere on the Lot connected to the main dwelling.

**5. Roofs**

- a. New roofs must conform in design (e.g. slope, appearance and profile) and materials to the existing structures. Only colors within the range of colors for roofs originally specified for the project will be accepted. Connections between existing roofs and new roof additions must preserve the overall form and architectural style of the dwelling. Mansard roof and flat roof forms (less than 4:12 pitch), composition roll roofing, and built-up roofing shall not be permitted for additions.

**6. Rooms (Including Lanais)**

- a. Wherever a room is added, exterior siding, window and door details shall match the original or existing structure.

**7. Second Story Additions to an Existing One-Story House**

- a. Single story residences not designed for a second-story addition generally encounter architectural and structural problems which

are difficult to overcome. Detailed review by the MC will be required to determine issues of open space, view planes, roof line and architectural compatibility with existing homes in the same neighborhood, architectural compatibility with the existing dwelling, and other considerations.

- b. A second story must be setback a minimum of 5 feet from the required front yard setback line. See Figure \_\_\_\_.

**8. Setbacks**

- a. Setbacks for all structures, extensions and enclosures at front and rear yards shall be 15 feet with a minimum side yard setback of 8 feet.
- b. There shall be no parking within the required front yard setback except on paved driveways leading to a carport or garage.
- c. A minimum of 50% open, unpaved area shall be maintained in all front yard setbacks.
- d. Corner units shall follow front setbacks for the side on which the garage occurs. The remaining corner frontage shall conform to side yard setbacks. Owners must adhere to all Hawaii County codes particularly those regarding sight distance requirements for corner lots.
- e. Maximum lot coverage (including garage or carport) shall not exceed 50% of the total area.

**E. Grading**

- 1. The Owner shall be responsible for the maintenance of the Lot including wind and water erosion control and proper drainage control.
- 2. All grading, Excavation, Fill and site work required shall be done only in accordance with approved drawings and at the expense of the Owner. Excavation, footings or drainage areas extending beyond the subject property line will require the written permission of the affected neighboring property Owner(s).
- 3. Fill material brought to the site shall be free of adobe, termites and deleterious matter.
- 4. All graded areas on improved Lots shall be landscaped within the time requirements listed below. Surface runoff shall be dispersed or channeled in such a manner as to prevent erosion damage and/or excessive water and soil flow through adjacent Units.
- 5. The Owner shall obtain, if necessary, a grading permit for cut and Fill as required by the ordinances of the County of Hawaii and shall abide by all ordinance requirements.
- 6. Excavation
  - a. Whenever an Owner excavates within his Lot, it shall be done in such a manner as not to adversely affect the drainage of adjacent properties.
  - b. Whenever Excavation creates an unstable or potentially unstable bank condition, the Owner shall take appropriate action to control and retain said embankment. Excavation which creates a high

and unsightly retaining wall may be disapproved.

- c. There are no dump sites available for the disposal of excavated dirt within the Villages of La'i'opua.

7. Fill

- a. Whenever an Owner seeks to Fill his Lot, it shall be done so as not to adversely affect adjoining properties. Whenever Fill creates an unstable or potentially unstable bank condition, the Owner shall take appropriate action to control and retain said embankment. Fill which creates an extremely high and unsightly retaining wall may be disapproved.

- 8. Should Fill or Excavation cause destruction of existing drainage swales or natural drainage patterns, it shall be the Owner's responsibility to restore said swales and drainage patterns or to otherwise provide for adequate drainage which does not adversely affect adjoining Lots.

**F. Ground Termite Treatment**

- 1. Soil under all concrete slabs on grade and under all building floors, whether on grade or over air space, and all footings and masonry foundation walls shall be treated against subterranean termites. All termite treatment work shall be performed by a properly licensed and qualified pest control operator.
- 2. Chemicals used outside the buildings or in accessible spaces under buildings shall be used only in strict accordance with all governmental laws and regulations and with the highest regard for the safety of children, plants and pet life.

**G. Gutters and Down Spouts**

- 1. Gutters and down spouts must be installed in a manner such that existing drainage plans as shown in original construction drawings is maintained. Gutters and down spouts must be non-reflective and match the surfaces which they are attached, provided that copper gutters and downspouts need not be painted. Downspouts must be located so as to discharge the runoff entirely within the applicant's Lot. The proposed location of the down spouts should be clearly indicated on the plot plan submitted with the application.

**H. Landscaping**

- 1. All landscaped areas will be maintained in a neat and attractive condition. What constitutes "completed landscaping" shall be determined by the Covenant Enforcement Committee, but as a minimum, grading weeding (removal of all noxious weeds, and vegetation), soil preparation, finished seeding or planting of a suitable ground cover, and the planting or emplacement of plant and non-plant landscaping materials to a sufficient degree that the majority of the committee members agree that the area or Lot in question is a "completed landscape" - rather than primarily "dirt and weeds" will determine whether the landscaping requirements of these rules and guidelines are met.
- 2. The Owner shall landscape the front yard and planting strip(s) between the sidewalk and the street or curb line within three (3) months after



occupancy. The remaining grounds of the Lot shall be landscaped within twelve (12) months after occupancy. The MC may authorize extensions of these landscaping requirements when formal application has been made for landscaping Improvements which require extensive grading or Excavation work, or the installation of retaining walls, and/or fences, or the incorporation of driveways, walkways, or patios which are visible from a public street and which require MC approval. In the event that the MC has approved landscaping plans which incorporate the Improvements listed above, it may grant an extension for the landscaping requirement beyond the expiration dated of the applicable permit of not more than six months. The Covenant Manager or the Covenant Enforcement Committee may also extend these requirements if the Owner makes a substantial and significant effort to complete the landscaping in a timely manner. "Substantial and significant effort" will be determined by the good judgement of the Covenant Manager and/or a majority of the members of the Covenant Enforcement Committee.

3. Any portion of a Lot visible from a public street or neighboring property will be maintained in a good and clean condition. Owners of properties with electrical transformer or switch gear boxes are responsible for ensuring that the area is kept in good and clean condition. What constitutes a "good and clean condition" as it pertains to the maintenance of completed landscaping on any Lot shall be determined by the reasonable judgment of the Covenant Manager and/or a majority of the members of the Covenant Enforcement Committee.
4. Vegetable gardens are not acceptable as landscaping for front yard areas or planting strips located along any adjoining street.
5. A reasonable number of large plants in pots will be allowed for landscaping purposes. More than twenty-five (25) such plants will require formal approval of a landscaping site plan showing plant placement submitted under the provisions of these Rules and Guidelines.
6. There shall be no right to remove trees, shrubs or similar vegetation from the Association's common area by an Owner.

**I. Lighting**

1. Garden lights and floodlights may be installed provided that no light source is visible from neighboring property and that no glare is created which would unreasonably disturb adjoining property Owners or occupants.

**J. Lot Coverage**

1. A minimum of 50% open, unpaved area shall be maintained in all front yard setbacks.
2. Maximum lot coverage (including garage or carport) shall not exceed 50% of the total area.

**K. Materials**

**1. Quality**

- a. All materials used for structures shall be termite and fungus free and shall not be used or secondhand. Materials shall not be

garish by nature or as a result of their use with other materials. A mix of materials will be approved only if the materials in the proposed use will complement one another. The non-availability of materials originally proposed for use by an Owner is not sufficient justification for substitution of materials which are not acceptable to the MC.

- b. The use of any materials which vary aesthetically from those on approved plans is not authorized without specific approval by the MC.

## **2. Siding, Veneer and Facades**

- a. Certain vinyl sidings may be approved by the MC on a case by case basis. Owners desiring to apply exterior siding must apply to the MC for approval. Applications must include color samples which match the existing dwelling.
- b. Veneers such as sandstone, brick, manufactured stone are not generally appropriate but they may be approved on an individual basis if their use is compatible with the architectural and landscaping design of the Unit and do not detract from architectural standards of adjacent properties.
- c. The partial application of sidings or veneers to one area of a dwelling usually result in a "stage set" appearance that is generally unacceptable; such proposals will be considered on a case-by-case basis under the same criteria as for veneers.

## **L. Other Miscellaneous Improvements**

### **1. Antennas and Satellite Dishes**

Installation of antennas and satellite discs will be permitted only when not visible from a public street. Roof-mounted antennas and roof-mounted satellite discs of all types are prohibited.

### **2. Basketball Backboard and Hoops**

Basketball backboards and hoops must be maintained in good and neat condition. Only new materials may be used for construction and must be adequately maintained. Support structures must be painted to blend with adjacent materials..

### **3. Drop Blinds**

Drop blinds for balconies and lanais may be used provided they meet the following criteria:

- a. No garish or "loud" colors shall be used.
- b. Blinds shall be maintained at all times.
- c. Blinds shall be rolled and/or adequately tied down during periods of high winds to avoid slapping and banging noise.

### **4. "Gingerbread" and Trim**

- a. Scallops, shutters, decorative trim and other such "ginger bread" decorations may be approved only when compatible to the existing architecture of the dwelling.

### **5. House Decorations**

- a. Temporary holiday or special event decorations are exempted and

need not be submitted for approval provided that they are not installed sooner than 60 days before the holiday or event and are removed not later than 30 days after the holiday or event.

**6. Laundry and Clothes Drying Area**

- a. Clotheslines are permitted provided that they are not visible from a public street. Clotheslines may not be installed in carports so as to be visible from a public street. Nothing may be hung on or from any lanai if visible from a public street.

**7. Name Plates and House Numbers**

All residences must have easily readable house number affixed to the dwelling or, in the case of single-family units, on the mailbox.

**8. Refrigerators/Freezers/Washers/Dryers**

- a. Refrigerators, freezers, washers, and dryers shall not be located in carports or lanais so as to be visible from a public street or neighboring properties.

**M. Painting**

**1. Existing Color**

- a. No approval shall be required to repaint (including maintenance and touch up painting) the exterior of a structure in accordance with the originally approved color scheme
- b. Repainting with an existing color, where previous Owners painted with an unapproved color, is specifically not authorized.

**2. Changes of Color**

- a. Owners must obtain written approval whenever repainting involves changes in color. Only colors within the range of colors originally specified for the project will be accepted. Color samples must be provided with the application for paint approval. Small paint samples frequently do not match the color produced by the manufacturer and large areas of solid color often convey an impact which is not readily determined from small swatches. Responsibility for precisely matching the color samples provided to the MC ultimately rests with the Owner.
- b. Colors should be non-reflective, flat or semi-gloss natural tones. Strong and/or bright colors, whites and very light or highly reflective colors will not be approved as primary house colors unless specifically approved as part of the original color palette for the project where the dwelling is located. The use of transparent or semitransparent house stains will be considered on individual merit. A sample of the stain on the actual material to be used must be provided.

**3. New Additions - Paint to Match**

- a. Whenever a new addition or enclosure is approved, the Owner will be required to carry the new paint to a natural breaking point in the building such as a corner or change of materials, etc., in order to blend with the existing structure.
- b. The term "paint to match existing" when applied to additions or

enclosures means that the walls and trim of the new addition are painted the same color as the walls and trim of the existing primary dwelling. Matching an accent or tint color or using "complementary" colors for the additions new walls does not satisfy the requirement "paint to match."

- c. Where painting or repainting is performed on any structure without the required MC approval on file, complete with color samples, the Owner will be assessed a fine in accordance with the By-Laws, shall apply for approval as set forth in these Rules and Guidelines, and may be required to repaint if such approval is not granted.

**N. Roof Vents**

1. The adverse appearance of roof vents shall be minimized to the extent possible by installation below ridge lines and in those portions of the roof not facing a street. Roof vents utilizing reflective materials shall not be permitted.

**O. Sanitary and water piping.**

1. All piping shall be concealed.

**P. Screen Doors**

1. The MC may approve screen doors provided they are finished in such a way as to match the color of existing window frames or the color of the dwelling's siding or trim. Aluminum and steel screen doors with exposed reflective material or ornate designs shall not be approved.
2. Screen doors must be kept in good repair.

**Q. Solar Units**

1. Roof mounted tanks are prohibited.
2. To the maximum extent possible, solar units must be integrated into the architecture and design of the building. No part of the solar panels, piping or any exposed part of the installation may be higher than the nearest roof peak. Where an open beam ceiling design home prevents a direct run of piping from solar panels to the storage tank, the piping may run over the peak of the roof for the shortest routing unless other routing is equal or shorter.
3. The highest point of any exposed part of the system may not be higher than 21 inches above the surface (sloped or flat) of the roof on which it is mounted.
4. The lowest point of any exposed part of the system may not be more than 6 inches above the surface (flat or sloped) of the roof on which it is mounted.
5. Reflective surfaces are not permitted for any exposed parts. Other exposed surfaces must be painted to match the surface on which it is mounted. Owners will ensure that all painted surfaces are properly maintained to prevent peeling and cracking of paint.
6. Solar panels should be installed as far as possible to the rear of the house. The front slope of the roof of the house or carport may not be used.

**R. Swimming Pools and Hot Tubs**

1. General
  - a. Swimming pools, whirlpool baths and hot tubs may only be constructed in back yards. Swimming pools constructed above grade (on the ground) shall not be permitted. Whirlpool baths and hot tubs will be considered on their own merits.
2. Filter Noise
  - a. The pump, filter and skimmer units for swimming pools, whirlpool baths or hot tubs shall be adequately soundproofed used in such a manner as to prevent a nuisance to neighboring property occupants. Should undue noise result from operation, Owner will, at the Covenant Manager's request, take immediate steps to curtail the noise by changing operating methods, providing added soundproofing, etc. Notwithstanding the MC's right to approve and require adjustment to the filtering unit, the Owner shall have full responsibility therefor and shall hold the Association harmless against any and all claims arising from the maintenance and operations of the swimming pool, whirlpool bat, hot tub and equipment.
  - b. Equipment and enclosures more than 30 inches in height are not permitted within a required yard setback.
- S. **Utilities Service**
  1. All residential utility, electric, telephone and TV cable service lines shall be underground.
- T. **Walls and Fences**
  1. **Access to Adjacent Properties**
    - a. Where access is required to an neighboring property for the construction of walls/fences (or any other reason) written permission must be obtained from the Owner of the neighboring property prior to accessing the neighboring property.
  2. **Combination Fences and Walls**
    - a. Where fences are used in combination with walls, a 6 ft. maximum height shall apply to the wall and fence combination. When an Owner elects to construct a retaining wall and a separate fence, the fence shall be constructed at least 4 ft. away from the retaining wall. The area between the fence and wall shall be maintained with landscape material.
  3. **Fences and Walls at Front Yards**
    - a. No fences or walls shall be permitted within the 10 ft. front yard setback. Fences or walls, not more than 3 ft. high, may be located from the front face of the building up to the 10 ft. front yard setback line. Decorative gates may exceed the 3 ft. limit. Shrub plantings approximately one-half the height of the fence or wall should be utilized on the street side of the fence or wall.
  4. **Fences and Walls at Rear Yards**
    - a. Rear yard property line fences and walls are permitted to a height of 6 ft.

**5. Fences and Walls at Side Yards**

- a. Side yard fences and walls shall be limited to 6 ft. in height from the rear property line to the front face of the building and to a maximum of 3 ft. in height from the front face of the building to within 10 ft. of the property line.

**6. Party Walls and Fences - Joint Ownership and Maintenance**

- a. Whenever two adjacent Owners desire to jointly construct a fence or a wall along and over the property line, it is required that a joint ownership and maintenance agreement incorporating the provisions of the Declaration be signed.

**7. Retaining Walls at Adjacent Properties**

- a. Owners with sloping grades within their Lots may make these areas usable by installing retaining walls, provided that the walls do not exceed the allowable height for the location of the wall.
- b. Where grade differential exceeds the allowable height of wall, terracing or retaining walls may be required to stay within the maximum allowable wall height. The terraced area must be at least 4 ft. wide and maintained with approved landscape material. An Owner on an upper adjoining parcel also may construct a fence at his property line.
- c. It is the Owner's responsibility to ensure that all walls are designed and constructed using sound engineering principles.
- d. The Owner must also obtain all required approvals and building permits prior to commencing any work, including the neighboring property Owner's approvals if construction activities will cross the property line. Copies of the approvals and permits must be on file with the Association.

**8. Side by Side Walls/Fences**

- a. Walls or fences are discouraged if they are to be constructed parallel with adjacent walls or fences. Design will be evaluated on a case-by-case basis
- b. Owners who decide to build separate property line walls/fences instead of developing a common property line wall/fence will agree to jointly maintain the area between any two walls/fences.

**9. Wall Materials and Design**

- a. All fences and walls must be of the same design and materials as utilized in the initial construction of the project and compatible with the perimeter walls and fences for the project. Chain link is not permitted in the front yard or when visible from a public street.
- b. Whenever a fence by nature of its construction and materials has a "good side," said good side shall face outward from the property towards the neighboring property or an adjacent public or private street. The unfinished side, if any, which exposes framing, support materials, bracing, etc. shall face inward to the property which may, at the option of the Owner, be finished with an approved material.

**U. Window Tinting and Reflective Finishes**

1. No reflective finishes shall be used on exterior surfaces (other than glass and the surfaces of hardware fixtures) where such exterior surface is visible from neighboring property. Highly reflective window tinting which creates a glare on adjacent properties or streets is not to be construed as a "glass" exception to the reflective finish restriction. Such window tinting treatments are specifically prohibited.
2. All window tinting installations are subject to review. Applications for window tinting should be accompanied by a manufacturer's specification sheet and a minimum 3" x 5" sample. Metallic finishes are discouraged.

**V. Other Requirements or Conditions of Approval****A. Disposal of Construction Waste and Debris**

1. Each Owner shall be responsible for promptly disposing of construction waste and debris and for keeping the public, private and common areas surrounding his property free of waste and debris at all times.

**B. Maintenance of Public Areas During Construction**

1. Owners shall keep all public areas clean during periods of construction. Materials shall not be stored so as to block or partially block public access areas. Once the residence has been completed, no construction materials or equipment may be stored in any area visible from adjoining streets.

**C. Time Requirements**

1. Owners shall pursue work requested in a timely fashion to completion. Failure to complete construction, modification, additions, Improvements, or painting prior to the expiration dates of approvals granted by the MC will require the processing of a new Application for MC approval and the re-submittal of all plans and specifications as appropriate for reconsideration by the MC for issuance of a renewal permit.
2. Required Start Date
  - a. All permits and approvals granted by the MC are null and void if construction does not commence within 120 days of the date of issuance of any permit granted by the MC.
3. Expiration Dates for Paint Approvals
  - a. Approvals issued for painting or repainting have an expiration date of six months (6) from the date of issue except if painting approval was granted in conjunction with modifications, additions or other Improvements.
4. Expiration Dates for Modifications, Additions or Improvements
  - a. Permits for Modifications, additions, or Improvements have an expiration date one year from the date of issuance.
  - b. Cancellation of Approvals for Lack of Progress
    - (1) If at any time, more than 120 days have passed without substantial and significant progress toward completing any project for which the MC has granted a permit, the MC may declare all approvals null and void; and the Owner must

resubmit a new Application for MC approval, along with required plans, specifications, as amended. The Owner will be responsible for any processing fees in effect at the time of re-submittal. Determination of a lack of substantial and significant progress will be determined by a majority vote of the members of the MC.

- (2) The MC shall not be bound by any previous decision when reconsidering plans and specification which may come before the MC as a result of an Owner exceeding the time requirements for completion of any project.

**D. Underground Installations and Easements**

1. The Owner shall be responsible for determining the location of easements, utility lines and underground installations prior to the start of any construction.



**DRAFT**

# Villages of La'i'opua

Kealakehe  
North Kona, Hawaii

*Handbook for  
New Residential Construction*  
December 1997

A Master Planned Community  
by the State of Hawaii  
Housing Finance and Development Corporation

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## I. INTRODUCTION

### A. Master Planned Community Goals and Objectives

1. The major goals for Villages of La'i'opua are: 1) Development as a quality residential community with housing opportunities for residents of all income and social groups; 2) Establish neighborhoods in which social interaction is encouraged, and family and individual well-being are supported; 3) Create a community with a strong sense of place; 4) Visually, socially and physically link the new community with surrounding urban and rural land forms; 5) Mix housing types to encourage social interaction; 6) Provide community amenities and services to meet the needs of residents for the entire region; 7) Sensitively develop the site with regard to visual, environmental (the effects of wind, rain, and sun), and social impacts; 8) Promote energy efficiency; and 9) Provide a wide range of residential, commercial and service land uses that are aesthetically, physically and economically supportive of one another.

### B. Purpose of the Handbook

1. The concepts presented in the Handbook for New Residential Construction (Handbook) serve as a developer's guideline for the development within Villages of La'i'opua. The Handbook is subject to periodic revision.
2. The purpose of the Handbook is to establish a unified design sense for the planned community that meets the needs of the residents while being sensitive to site, climate and building design elements. These design parameters are meant to provide developers some flexibility in concept, design and application.
3. The Handbook is intended to provide a set of development rules to: 1) Enable development objectives to be met; 2) Define a high level of environmental quality throughout the development; and 3) Assist in the development of a high-quality planned community by requiring certain minimum standards, recommending possible design solutions, and prohibiting development incompatible with the project concept.
4. All construction must comply with this Handbook as well as all applicable codes, statutes, ordinances and other laws except as otherwise provided by statutory exemption.
5. In the event of a conflict between the Handbook and any code, statute, ordinance, law or statutory exemption, the stricter shall govern.

### C. Design Review Authority

#### 1. New Construction Committee (NCC)

- a. There are two committees which are responsible for establishing and enforcing the design standards for Villages of La'i'opua. The New Construction Committee (NCC) has jurisdiction over all original construction in Villages of La'i'opua and has the task of

assuring that all developers who create projects within Villages of La'i'opua conform to the Handbook. Individual homeowners will have little or no contact with the NCC. The NCC consists of three to five members appointed by the Declarant under the Master Declaration so long as the Declarant owns any property within Villages of La'i'opua unless the Declarant specifically surrenders that right.

**2. Modifications Committee (MC)**

- a. The committee which has the greatest effect on the individual homeowners is the Modifications Committee (MC). It has the overall responsibility for preserving and maintaining architectural and landscaping standards with respect to alterations and additions to existing dwellings. The primary objective of the MC in meeting this responsibility is to ensure harmonious aesthetic relationships between individual buildings and their sites and to ensure compatibility of each unit and its improvements with the architectural and landscaping standards which prevail within each village and within Villages of La'i'opua as a whole. However, in order to maintain overall control of the appearance of Villages of La'i'opua, the NCC has the power to overrule decisions of the MC.

**D. NCC Design Review**

**1. Approval Process**

- a. The first required submission by the developer is at the conclusion of the preliminary design phase.
- b. The second required submission by the developer for review and comment by the NCC is at the conclusion of the design development phase or when the construction drawings are approximately 40 percent complete.
- c. The third required submission for review and comment by the NCC is at the conclusion of the construction drawing phase. At that time, composite plans for SFDR projects must be submitted. See Figure 1 - Sample Composite Plan.
- d. Submissions for review and approval by the NCC must be complete. Each submission must include all site plans, building plans, walls, fences, signs, lighting, entry treatments, landscaping and irrigation plans and all other proposed improvements for original construction.
- e. The NCC will review and comment within 30 days of a complete submission by the developer.
- f. The developer and its consultants are encouraged to dialogue with the NCC during the design and construction drawing process.
- g. During construction, substantive design revisions must be

- submitted by the developer for review and approval of the NCC.
- h. After construction of the project is complete, the developer shall provide record drawings of construction which includes composite plans for SFDR projects. Two completed sets of copies and one AutoCad file will be provided for reference purposes. Separate drawings of common area improvements to be dedicated or maintained by any association (village or master) are also required.

**2. Color Selection Approval**

- a. All exterior colors must be submitted for approval. The actual material colors should be presented in a coordinated, organized manner, with material identification, manufacturer color name and color number clearly and neatly indicated on each different proposed color selection. Color boards no more than 24" x 36" showing a complete color palette for each housing product type are acceptable, however, 8"½ x 11" (letter size) or 8"½ x 14" (legal size) are preferred.

**II. VILLAGE PLANNING AND DEVELOPMENT**

**A. Village Concept and Land Use**

1. Villages of La'i'opua's master plan proposes phased development of large land parcels or "villages." The master plan is a fluid planning tool and will be revised periodically by the Declarant. See Figure 2 - Villages of La'i'opua Master Plan. It is intended that this planned community include residential, commercial, public facility and other uses. Individual villages may have mixed uses.

**B. Themes**

1. Themes of individual villages or projects should visually relate to building elements found in historical or contemporary West Hawaii. Themes should incorporate indigenous Hawaiian elements such as hip or gable roofs, lanais and porches, or post and pier foundations.
2. Overall, variations and interpretations of contextual architectural elements are encouraged, although a reference to a common vocabulary should be maintained.

**C. Graphic Identity**

1. The theme and identity of individual villages, projects or facilities should be expressed and reinforced through signs, logos, typography and names.

**D. Village Entries**

1. All entry areas to the individual villages or projects shall be landscaped.

The entry design shall be consistent with the theme of the individual village or project.

2. The entry areas shall use signage incorporating the village's graphic identity, logo, and typography.
3. Entry area design should avoid excessive use of water and electricity. Drip irrigation and/or automatic sprinkler system should be used whenever possible to conserve water.

**E. Village Landscaping**

1. As landscaping is such a strong and vital element in the appearance of any residential community, particular care should be taken to ensure that appropriate landscaping that is easy to maintain is selected for the project.
2. Interesting shade-oriented streetscapes using native plant species should be created.
3. Shrubs and hedges should be used as visual and noise buffers.
4. Xeriscape landscaping plants and materials shall be used whenever possible to conserve water and reduce landscape maintenance. No water features will be permitted.
5. Common areas to be owned or maintained by an association (village or master) should be minimized.

**F. Street Standards**

1. Streets within Villages of La'i'opua should be generally curvilinear so as to minimize the monotonous effect created by linear streets, respect existing topography and minimize large banks of earth adjacent to roads. Short cul-de-sacs, loop streets, and modified grid patterns should be combined to create efficient, aesthetically pleasing street patterns. See Figures 3 and 4.
2. Concrete sidewalks shall be placed in accordance with public works standard details and applicable standards of accessibility for the disabled.
3. "Elbow turns" may be allowed on minor streets and cul-de-sacs.
4. Along internal village roads, one 5-gallon canopy tree shall be planted for every 50 linear feet of sidewalk.
5. Reduced street widths are encouraged to minimize site grading and cut/fill amounts.
6. Narrow driveways with off-street parking stalls are encouraged in both SFDR and MFR areas.
7. Street hierarchy and layout should be planned so that there is clear directional vehicular access through each village so that unnecessary

traffic volumes are minimized.

**G. Perimeter Walls**

1. A fence or wall is required around the perimeter of every village and are generally solid or non-transparent for screening and privacy purposes.
2. Every perimeter wall along an arterial roadway (any road outside a village's perimeter) shall include fieldstone as a material in its construction. The field stone is intended as a unifying material for perimeter walls throughout Villages of La'i'opua. The fieldstone may be used in a variety of ways such as contiguous solid walls, base walls or pilasters in conjunction with wood or metal in-fill material.
3. Perimeter walls and fences shall be non-transparent along SFDR rear and side yards or parking areas of MFR projects closer than 20 feet to the property line.

**III. SINGLE FAMILY DETACHED RESIDENTIAL (SFDR)**

**A. SFDR Planning and Layout**

1. Single family layout should encourage pedestrian/bicycle access to parks through cul-de-sacs and dead-end streets tangent to open spaces, or through dedicated pedestrian/bicycle pathways.
2. Direct driveway access to lots at village entries should be avoided. Instead, side yards should abut the village entry to avoid traffic conflicts.
3. A variety of street scenes should be provided within each village by minimizing the number of houses lined up in a row utilizing the same design. No more than three adjacent houses with identical designs may be placed next to each other and in such cases, at least one floor plan shall be "reversed." A maximum of 12 homes on one side of a cul-de sac street is recommended.
4. Variety in massing and orientation of homes that back up to arterial and internal collector streets should be provided. Variation of setbacks and one and two-story massing is encouraged.
5. It is recommended that SFDR developments consider building foundation design and siting which is sensitive to the existing slope and terrain. Large foundation retaining walls are discouraged. Post and pier foundations in accordance with building codes are encouraged, with buildings "stepping" down the hillsides.
6. Clustering of single family homes is encouraged to minimize grading with homes clustered between natural land formations such as valleys and ledges.

**B. SFDR Lot Area and Dimensions**

1. In order to achieve an economically feasible project, higher densities are encouraged but require innovative planning and design in order to provide adequate lot areas and a sense of open space. Configurations



such as cluster lots, Z-lots, angle lots, zipper lots, as well as, conventional rectangular lots should be considered. See Figure 5 - Innovative Lot Configurations.

2. Zero-lot-line parcels may also be used if it proves to be efficient.
3. Suggested minimum lot area shall be 3,500 square feet with minimum desired lot width or depth of 40 feet.

**C. SFDR Building Height, Stories and Massing**

1. The maximum building height is 30 feet. Building height shall be measured from the lowest point of the finished ground surface adjacent to the building to the uppermost point of the building.
2. Maximum number of stories is two plus a mezzanine loft. A mezzanine loft shall not exceed one third of the floor area of the story directly below.
3. Any second story portion must be setback a minimum of 5 feet from the required front yard setback line. See Figure 6 - Single Family Dwelling Second Story Setback.
4. It is recommended that views from upstairs, windows, decks or lanais into an adjacent or near neighbor's window or private yard should be buffered by landscaping, fences or walls.
5. Building massing that steps down with the natural terrain is encouraged.

**D. SFDR Setbacks and Lot Coverage**

1. Minimum front and rear yard setbacks shall be 15 feet with minimum side yard setbacks of 8 feet.
2. Adjacent houses must have a minimum two foot staggered front yard setback. See Figure 7 - Single family Dwelling Front Yard Setback.
3. There shall be no parking within the required front yard setback except on paved driveways leading to a carport or garage.
4. A minimum of 50% open, unpaved area shall be maintained in all front yard setbacks.
5. Maximum lot coverage (including garage or carport) shall not exceed 50% of the total area.

**E. SFDR Garage and Parking Requirements**

1. A 2-car carport or enclosed garage shall be required for all single-family dwellings. Garage doors, if included, shall be non-corrosive or treated ferrous metal panels with simulated wood grained sandwiched onto foam panels.
2. Garage doors, if provided for garages set back less than 15 feet from the front property line, shall have an automatic garage door opener.
3. Clustering of parking and shared delivery should be encouraged to minimize grading on sloped sites.
4. Where shared driveways occur, one additional guest parking stall for each SFDR is required. Parking may be in tandem with the required garage or carport parking.

**F. SFDR Architectural Considerations**

1. Laundry equipment is not permitted in an exterior location or carport except if screened from view from adjacent lots or streets. Laundry equipment is not permitted within a required yard.

**G. SFDR Fences and Walls**

1. It is encouraged that side and rear yards be enclosed with a minimum 4 foot high fence.
2. A fence with a gate separating the front yard and side yards is required.
3. Fences and walls fronting streets should be constructed of solid materials. Side yard and interior backyard fences may be chain link if they are not along a roadway.
4. A coordinated design for fences visible from the street shall be provided for each village.

**H. SFDR Landscaping**

1. All unpaved areas in front yard (portions which are visible to the street) shall be grassed. Automatic irrigation is recommended.
2. Any planting strip lying between the sidewalk and the street bordering the individual home shall be grassed. Automatic irrigation is recommended. If irrigation is not provided, sleeves under the sidewalk are required to accommodate future installation of irrigation by the individual homeowners.

**IV. MULTI-FAMILY RESIDENTIAL (MFR)****A. MFR Planning and Layout**

1. To provide lower-priced housing, affordable multi-family sales and affordable rental units have been incorporated into many of the villages. It is envisioned that similar colors, materials and design elements used on the SFDR homes will be used on the MFR buildings to integrate them into the village.
2. It is intended that the buildings be designed to look like large "estate" homes.
3. Locating several MFR projects together in the same area should be avoided, so as to distribute densities and massing more evenly throughout the village.
4. MFR projects should be easily accessible from internal village roads. Layouts shall encourage pedestrian/bicycle access to parks through common areas.
5. MFR projects should have sufficient unit quantity to support an on-site manager and appropriate management budget. Project design should include a management office and storage space for yard maintenance equipment and supplies.
6. The creative use of townhouses or cluster units is required to establish

efficient MFR densities while providing individual living units with the personal style of detached houses.

7. Layout of buildings within the MFR should provide a variety of external street scenes within a project by orienting buildings in different directions yet maintaining sensitivity to trade wind and sun track.
8. It is recommended that MFR building foundation design and siting be sensitive to the existing slope and terrain. Large foundation retaining walls are discouraged. Post and pier foundations in accordance with building codes are encouraged so that buildings "step" down the hillside.
9. Children's play equipment, barbecues, and car wash areas should be included in the planning of MFR projects.

**B. MFR Lot Area, Dimensions and Density**

1. Minimum lot area shall be 7,500 square feet.
2. Minimum lot width and depth is 70 feet.
3. The preferred maximum density is about 1 unit per 2,500 square feet of land area.

**C. MFR Building Height, Stories and Massing**

1. Maximum desired height shall be 35 feet. Building height shall be measured from the lowest point of the finished ground surface adjacent to the building to the uppermost point of the building.
2. Maximum number of stories is two plus a mezzanine loft. A mezzanine loft shall not exceed one third of the floor area of the story directly below.
3. Where an MFR project adjoins a SFDR development, single-story units are recommended as a transition to the upper stories. See Figures 8 and 9 - Transition Between Single Family and Multi-Family Areas.
4. On any side facing a road, elevations and setbacks for MFR buildings should vary. Projections and recesses should be utilized to create an interesting streetscape.
5. Elevations of structures fronting arterial and internal roadways should be similar in character to the surrounding SFDR homes.
6. Horizontal structural and design elements should be used to visually reduce height. See Figure 10 - Multi-Family Dwelling.
7. Building massing that steps down with the natural terrain is encouraged for steeper areas.

**D. MFR Setbacks and Lot Coverage**

1. Fences or walls must be setback a minimum of 10 feet from any property line fronting an internal road.
2. No structure, parking area, or fence enclosing a "private yard" shall be permitted within 15 feet of any property line fronting an internal road.
3. Within 15 to 20 feet of any property line fronting internal road, no more than 60% of the area shall be enclosed by any building or enclosed by fences or walls. See Figure 11 - Multi-Family Setback.
4. Parking areas shall be setback a minimum of five feet from any side or

- property line when it abuts an SFDR or MFR project.
5. MFR structures shall be setback a minimum of 20 feet from any property line fronting an arterial roadway or abutting an SFDR or MFR project.
  6. No parking will be allowed within 20 feet of a property line along an arterial road with a transparent perimeter wall.
  7. Maximum lot coverage shall be 50%.

**E. MFR Parking Requirements**

1. Covered carports are desirable but open parking or a combination of both will be permitted. The minimum parking ratio shall be 2.1 stalls per unit. At least 10 percent of the total stalls will be reserved for guests. Special-purpose stalls (as for trucks or boat trailers) are encouraged.
2. Where gang-parking lots are used, avoid long straight bays of parking. Break up parking stalls by curving roadways and providing landscape pockets and trellises.
3. All parking areas shall be screened from adjacent streets, parks and villages. This may be achieved with berms, landscaping, fences or walls.

**F. MFR Architectural Considerations**

1. The overall massing and architectural features of the multi-family structures should present an "estate home" appearance.
2. The exterior design should employ design elements which soften the appearance of the MFR units.
3. Architectural elements should be introduced to provide variety and minimize the massiveness of multi-family development.
4. Lowered and pitched roof lines should be utilized to emphasize a human scale. The mixture of single-story and two-story height building units within a single building should be considered. Vary and take-up grade changes along common walls to emphasize individuality.
5. Private entry courts and/or stairs should be provided whenever possible.
6. Building layout should take advantage of natural light and ventilation. Corner units, single-loaded layouts, and staggered units which can take advantage of cross-ventilation are encouraged.
7. Floor plans that seem open and extend outward views and daylight into every room while also extending indoor living areas into private outdoor spaces are also required. Individual units should have an outdoor living area such as a lanai, enclosed patio or assigned yard.
8. An exterior storage closet is required for every MFR unit.

**G. MFR Fences and Walls**

1. All front, side and rear yards located along internal village roadways shall be enclosed with a minimum 4 foot high fence or wall. The fence may be transparent but should be uniform in design throughout the project. The use of secured gates where appropriate for pedestrian access is recommended.
2. MFR projects shall construct minimum 6 foot high non-transparent walls

or fences along any property line which abuts SFDR homes. The wall or fence shall incorporate fieldstone into its construction. The fieldstone may be used in a variety of ways such as contiguous solid walls, base walls or pilasters in conjunction with wood in-fill material.

#### **H. MFR Landscaping**

1. All unpaved areas shall be landscaped and utilize an automatic irrigation system.
2. Any planting strip lying between the sidewalk and the street bordering the MFR project shall be grassed and utilize automatic irrigation.
3. All parking lots shall be landscaped with a minimum ratio of one canopy tree per five parking stalls. Trees may be grouped in clusters within or surrounding the parking area.
4. Landscaping materials shall be selected and sited to minimize heat gain and to provide shading for the units.
5. Tress, shrubs and hedges shall be selected and installed to create a visual and acoustic buffer for adjacent SFDR homes. See Figure 12 - Recommended Privacy Buffer.
6. Drip irrigation and xeriscape landscaping plants and materials should be used to conserve water and reduce landscape maintenance.

### **V. ARCHITECTURAL DESIGN FOR SFDR AND MFR DEVELOPMENTS**

#### **A. Floor Plans**

1. Floor plans should be designed to maximize use of space and feeling of openness.
2. Interesting interior and exterior space should be created through architectural and building configurations.
3. Floor plans should reflect an outward orientation to usable exterior spaces and views.
4. Screened or unscreened lanais and/or verandas with railings should be provided to encourage outdoor living.

#### **B. Form, Mass and Scale**

1. Simple forms and building masses that relate to human scale are recommended.
2. Shadow lines and visual interest in the exterior elevations should be created by recessing entry courts, windows, doors and garage doors.
3. One and two-story unit combinations should be used to create a modulation of heights and recesses along the street.
4. Large masses should be broken with windows, doors and ornaments.

**C. Features and Detail**

1. Architectural features should include alternating roof slopes and gable conditions, gracious entry areas with covered porches, vaulted ceilings, and wrap around lanais.
2. Double-hung, casement, awning, or sliding windows with muntins are recommended with detailed attention paid to window proportions.
3. Decorative doors that compliment or match windows with wide trim (especially at window sills) are also important elements which add character and individuality to structures.
4. Details such as louvered vents, horizontal or vertical wood siding, wooden balconies, overhanging roof awnings, and picket type fences are all recommended to accent historical regional styles.

**D. Exterior Materials**

1. Weatherable materials in exposed locations should be utilized.
2. Rough sawn lumber, stucco, lava rock, field stone are permitted building materials. Corrugated or standing seam metal roof materials are permitted.
3. Use of "natural" materials and beam on post construction which provide continuity with earlier architectural styles representative of existing structures in West Hawaii are encouraged.
4. Exposed concrete block, plastic, fiberglass, imitation stone or brick veneer, and reflective materials or coatings are prohibited.
5. Windows and other glass surfaces shall not be mirrored or reflective except for window tinting approved by the MC.

**E. Roof Pitch and Material**

1. Gable, hip or shed roof forms with large roof overhangs should be utilized.
2. At least 80% of the roof area shall have slopes between 4:12 and 6:12.
3. Eaves shall extend at least 30 inches over all wall openings (excluding vents).
4. Although corrugated metal is an allowable roof material, it is preferred that a standing seam metal roof be employed.
5. Roof materials shall be consistent throughout a village.

**F. Resource Conservation and Environmental Considerations**

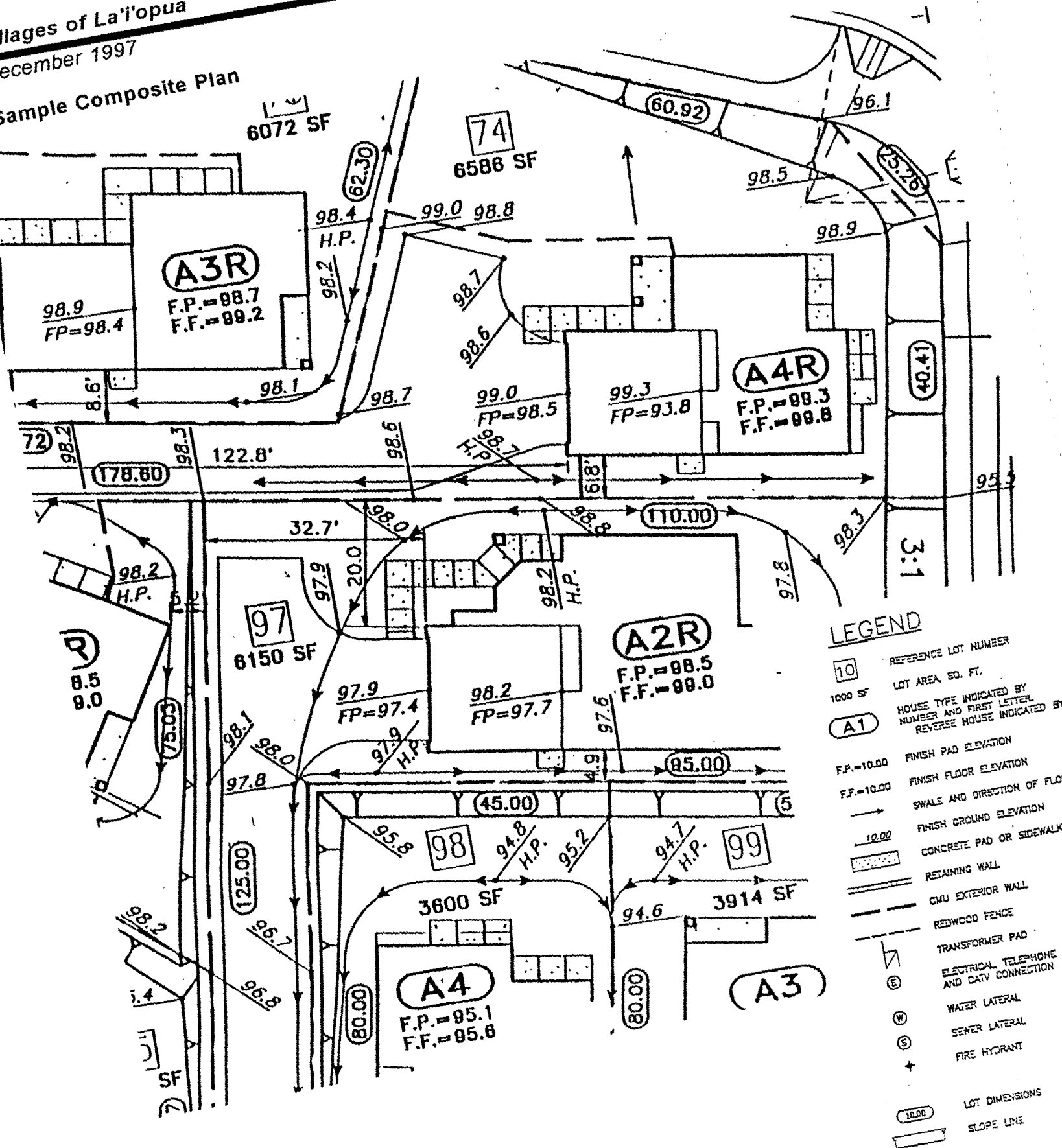
1. Architectural elements such as corner windows, atriums, dormers and/or clerestories that will provide natural light and ventilation are encouraged.
2. Operable windows should be installed to take advantage of cross ventilation and with openings towards prevailing winds.
3. Alternatives for the reduction of heat gain transfer shall be considered and utilized whenever possible.
4. Attic spaces should be insulated and ventilated to reduce heat buildup.
5. Conservation measures such as solar panels, heat pumps, and water-conserving plumbing fixtures such as low-flush toilets should be used.

- Roof storage tanks for solar water heating systems are not permitted.
- 6. Installation of a uniform screen door at the entry to each MFR unit is required.
- 7. Installation of ceiling fans is recommended.

**G. Exterior Colors**

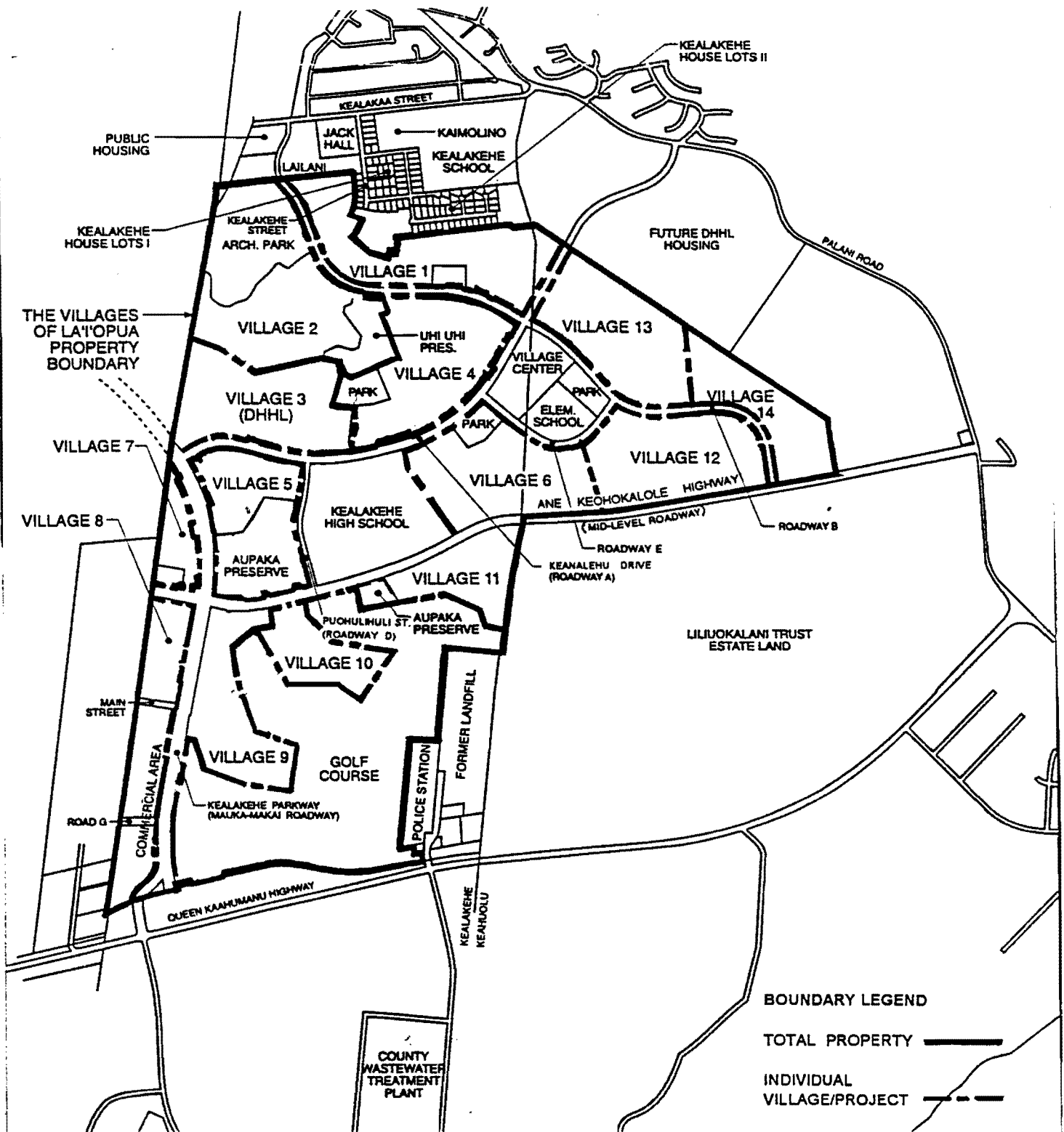
- 1. Colors must complement the existing rural character of the site, and be suitable for residential purposes. One main body color for buildings with is required Contrasting colors may be used for trims.
- 2. Colors should be selected on the basis of the desired appearance and attractiveness of the building, compatibility with building colors in the area, and the prevailing color scheme of the architectural and natural landscape character of the community. Compatibility with the building's site and surrounding topography is especially important.
- 3. Pastel colors are required (white as an accent is acceptable.)
- 4. Colors which clash with colors of adjacent buildings and use of dark colors for the building's base should be avoided.
- 5. Roof colors should be light or earth-tone.
- 6. Use of more than four colors (base, wall, trim, roof) is prohibited.

Ilages of La'i'opua  
December 1997  
Sample Composite Plan





Villages of La'i'opua Master Plan



NORTH

0 900 1800

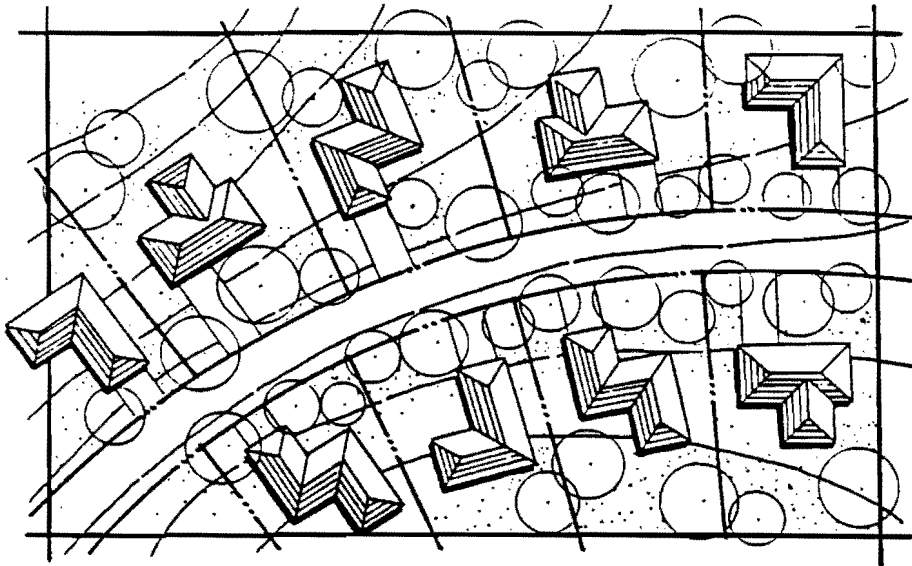
SCALE IN FEET

PROJECT STATUS

Villages of La'i'opua  
JAN 1998

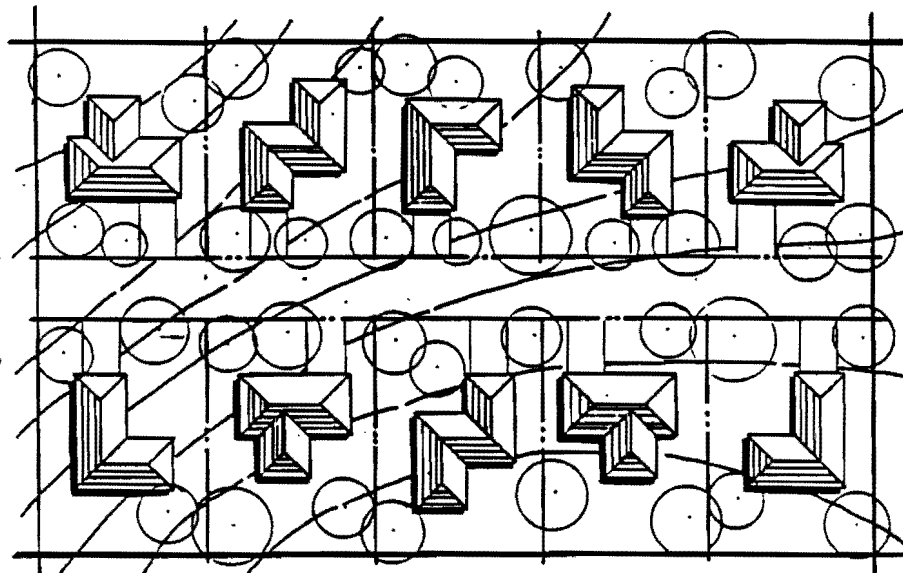
Desirable and Undesirable Land Division

DESIRABLE LAND DIVISION



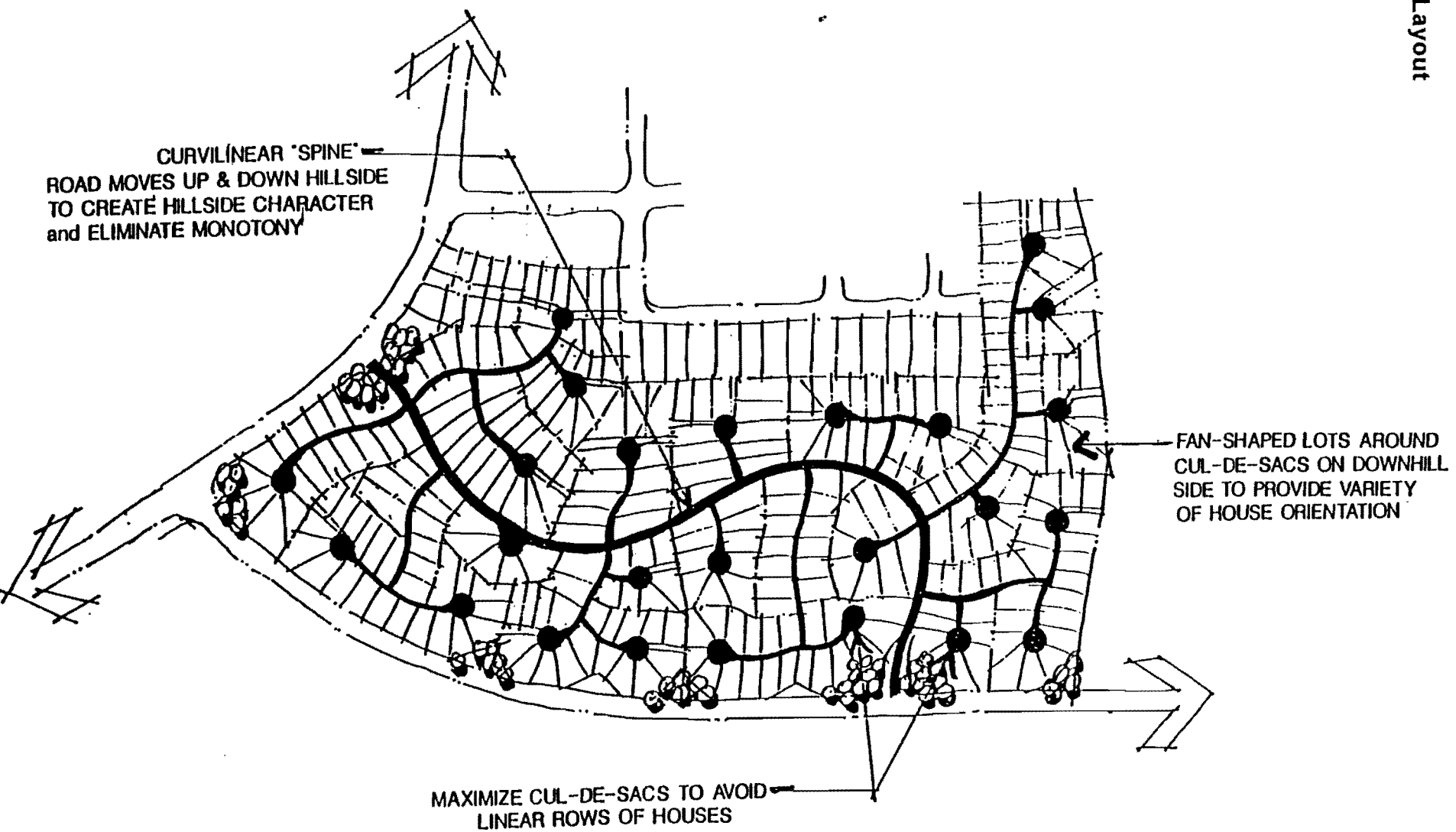
- ROAD AND LOTS FOLLOW CONTOURS OF TOPOGRAPHY
- CURVILINEAR ROADS CREATE INTEREST
- BLENDS INTO THE TOPOGRAPHY
- REDUCES AMOUNT OF GRADING

UNDESIRABLE LAND DIVISION

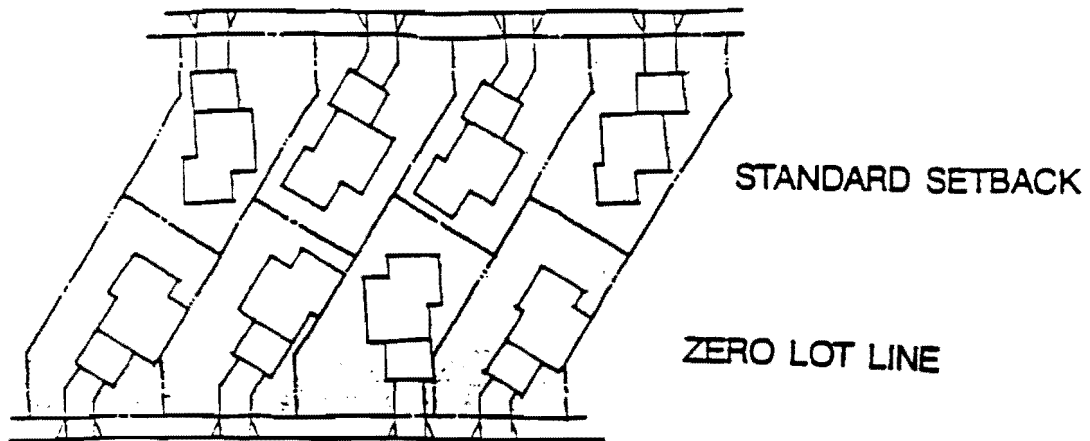


- MONOTONOUS LOTS, NO VISUAL INTEREST
- IGNORES NATURAL TOPOGRAPHIC ELEMENTS
- INCREASED AMOUNT OF GRADING

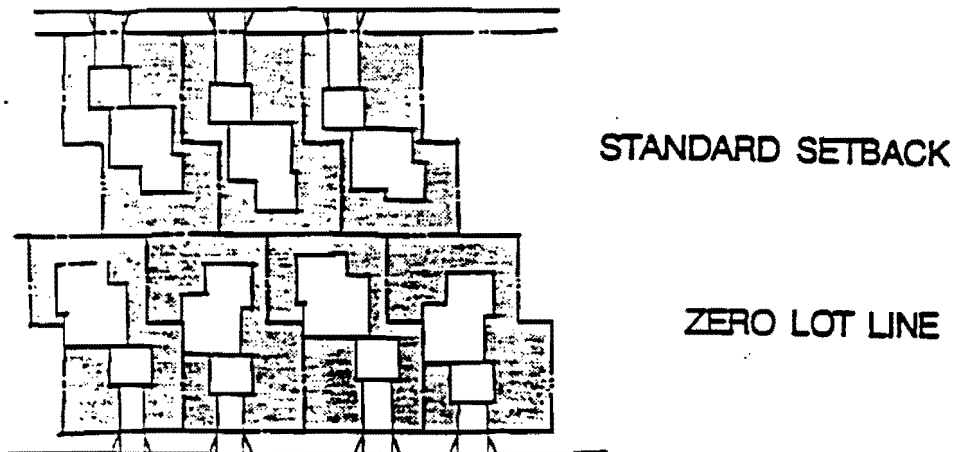
Desired Roadway Layout



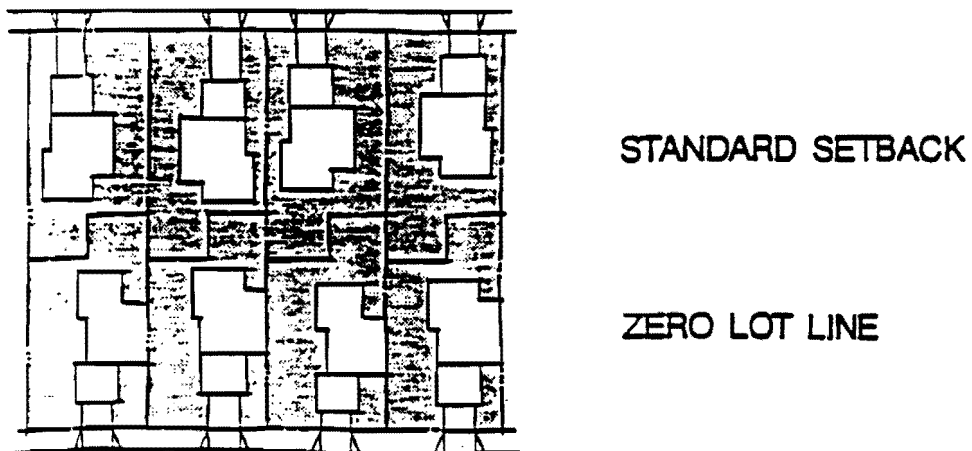
Innovative Lot Configurations



ANGLED LOTS

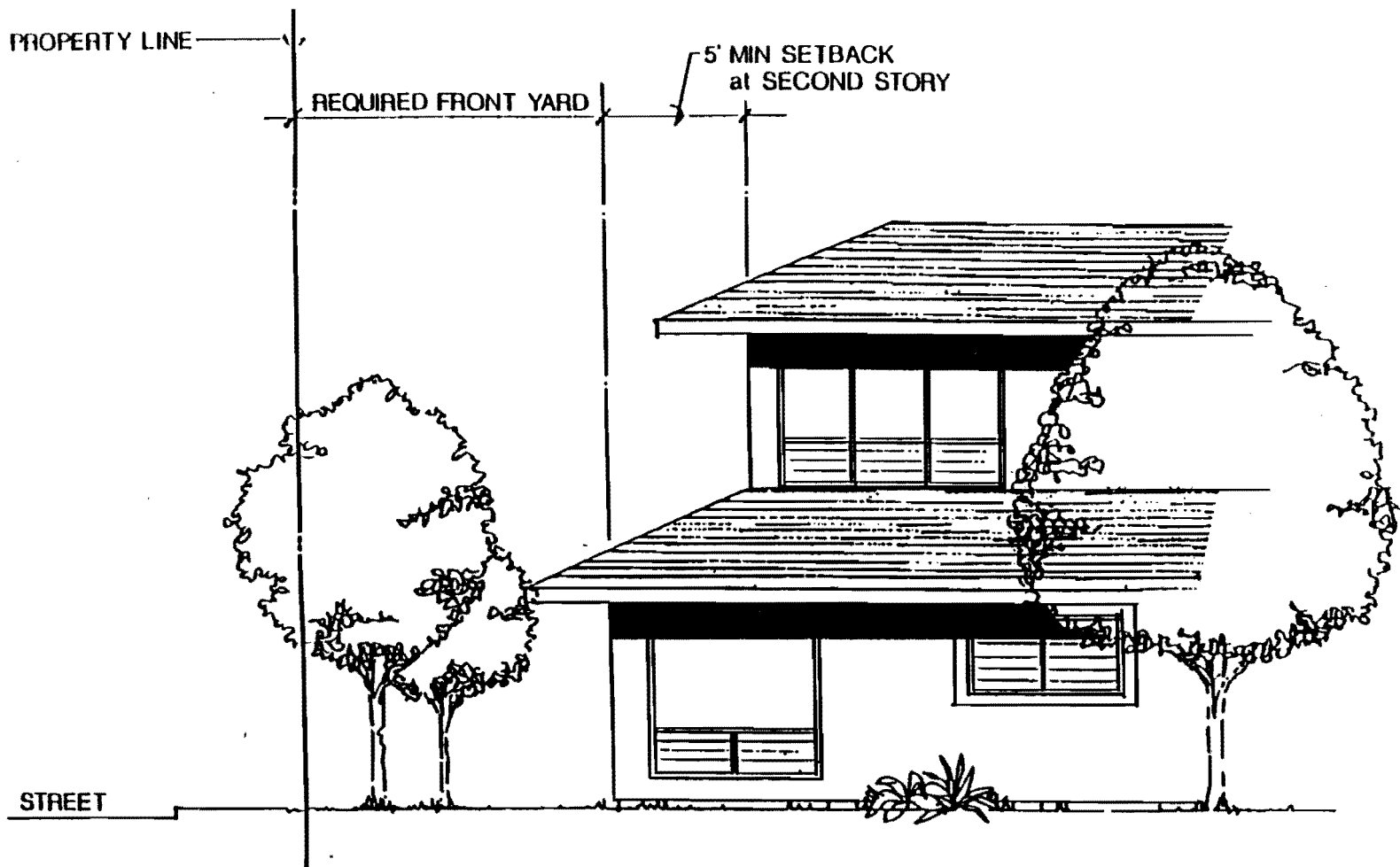


"Z" LOTS

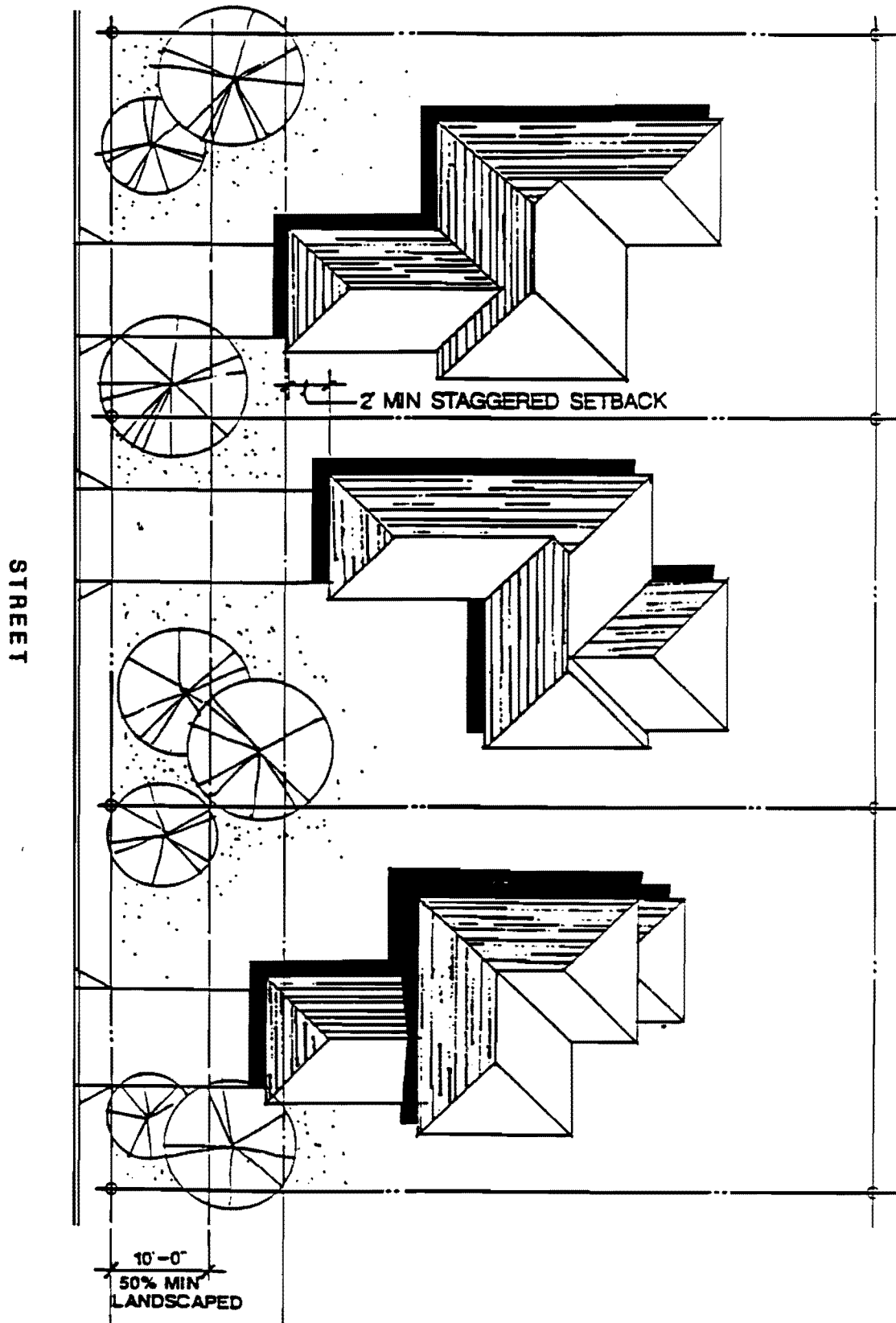


ZIPPER LOTS

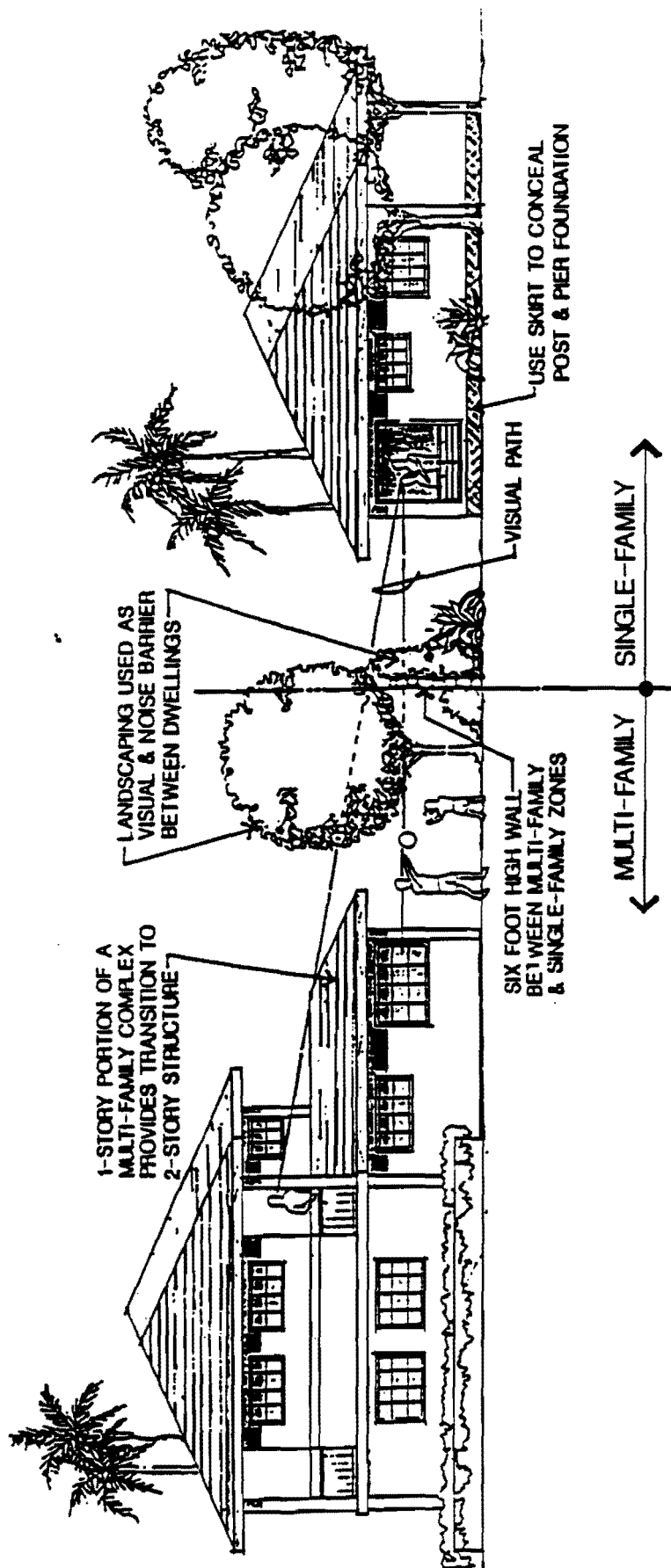
Single Family Dwelling Second Story Setback



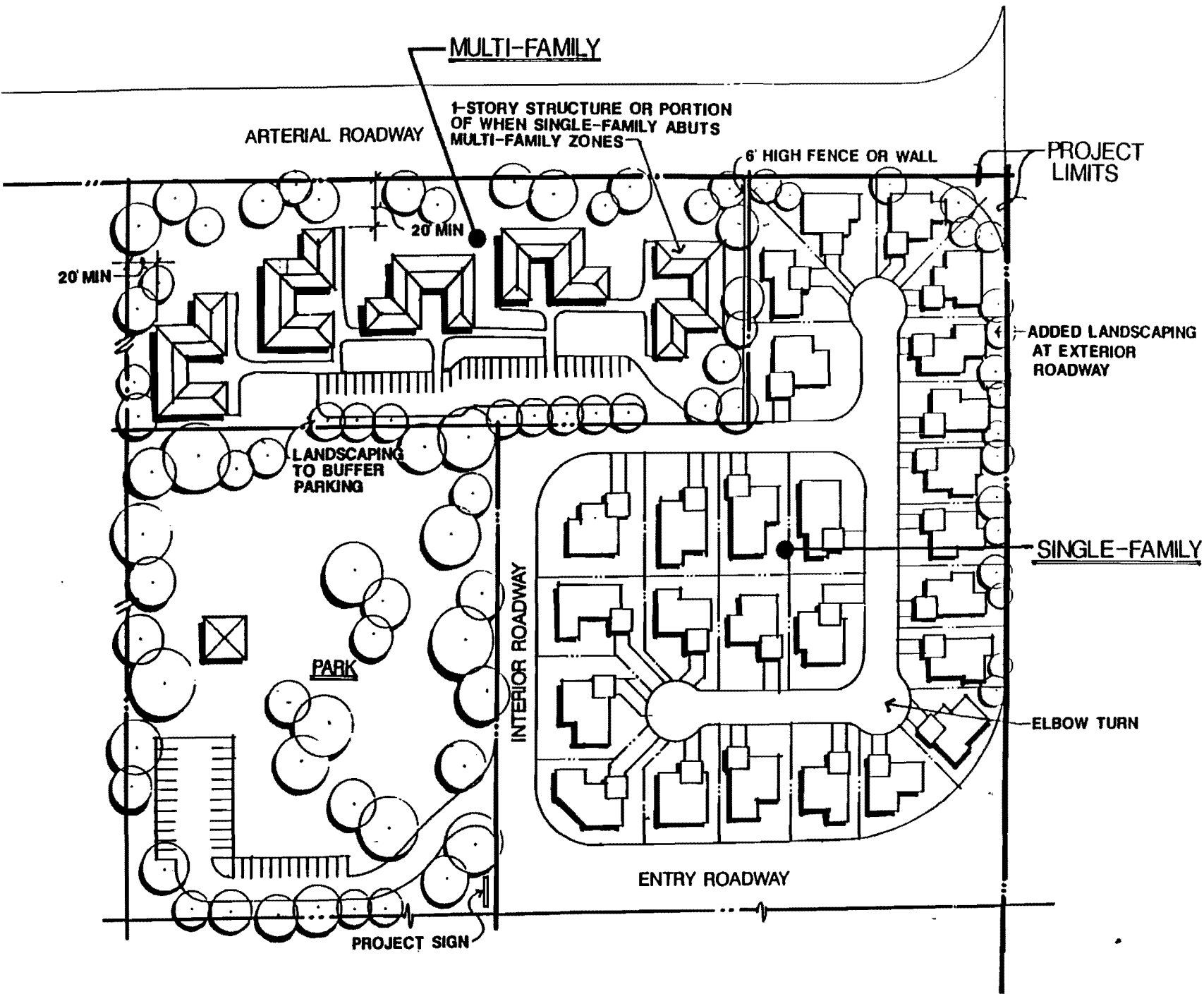
Single Family Dwelling Front Yard Setback



Transition Between Single Family and Multifamily Areas - Elevation



Transition Between Single Family and Multifamily Areas - Plan





Multifamily Dwelling

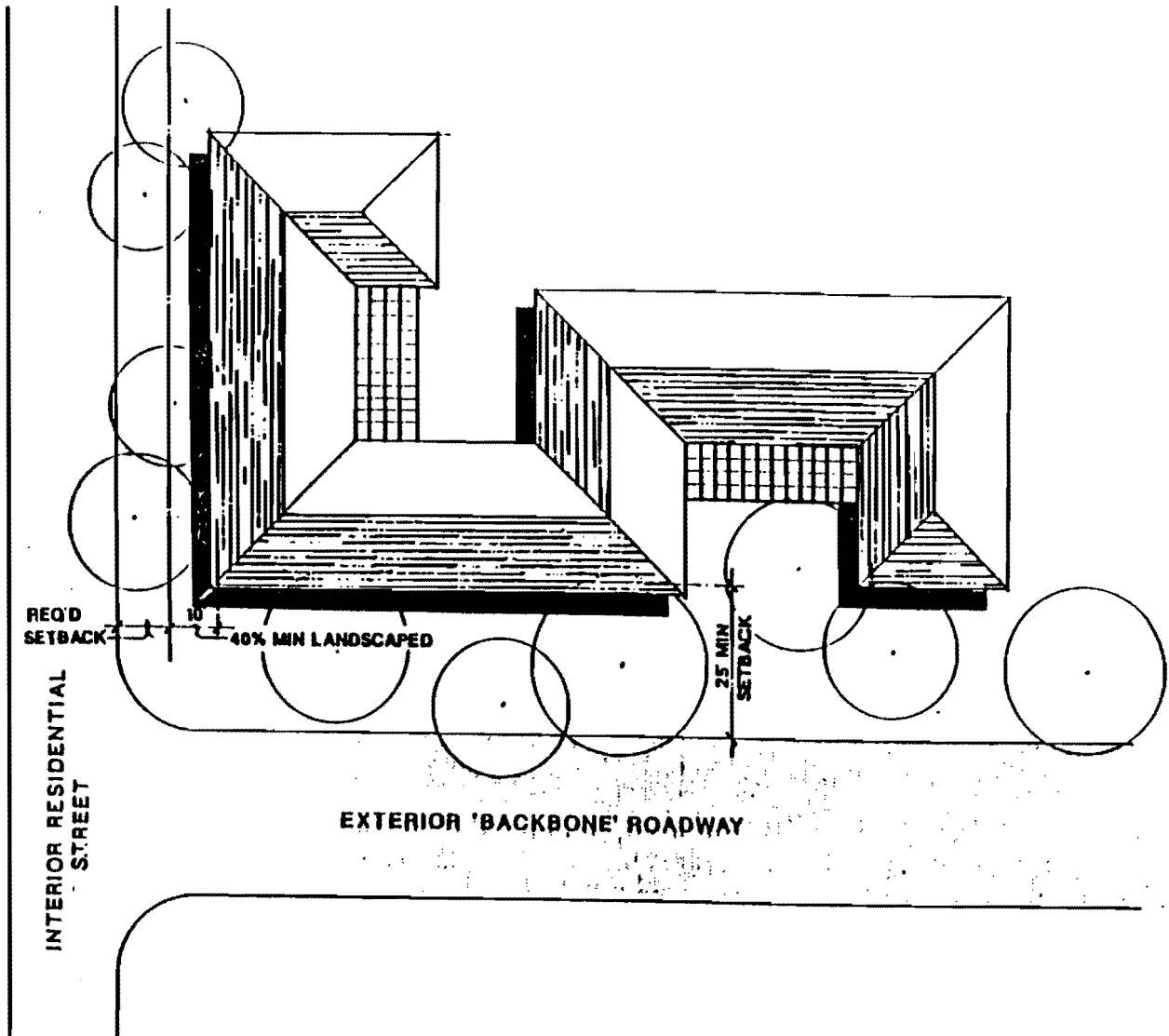


- RECESSED AREAS TO CREATE INTEREST IN ELEVATIONS
- STRONG HORIZONTAL BANDS TO VISUALLY REDUCE HEIGHT

Recommended Privacy Buffer



Multifamily Setback



## **Matsunaga, Stewart T**

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**From:** Takahashi, Isaac M  
**Sent:** Monday, February 22, 2016 8:47 AM  
**To:** Matsunaga, Stewart T  
**Cc:** Sakamoto, Norman L  
**Subject:** Rental Housing in the Villages of Laiopua 4 - Pre proposal conference

Stewart,

Here is the information requested from the pre-proposal conference:

When village 5 was offered 297 UI lessees were contacted, 76 expressed in (25.59%), 43 got pre-qualified (14.48%). The applications list was also contacted 4306 applicants were contacted, 113 expressed interest (2.62%), 29 got pre-qualified (.67%).

There were five models offered, 2/2 single story, 3/2 single story, 3/2 two story, 4/3 two story and 5/3 two story. Prices were as follows; 2/2 \$224,865, 3/2 \$266,125, 3/2 \$252,900, 4/3 \$291,425 and 5/3 \$313,375.

Currently we have 229 UI lessee's and Hawaii Islandwide List has 5,629 applicants as of the 1/31/16 application report.

isaac

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