

Exhibit A

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TITLE OF DOCUMENT:

DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE LAHAINA BUSINESS PARK

PARTIES TO DOCUMENT:

Declarant: WEST MAUI VENTURE GROUP
P. O. Box 220
Kihei, Maui, Hawaii 96753

TAX MAP KEY(S): II-4-5-010:007

(This document consists of 50 pages.)

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE LAHAINA BUSINESS PARK**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&R's"), made as of this 13th day of December, 1999, by WEST MAUI VENTURE GROUP, a Hawaii limited partnership, whose principal place of business is Kihei, Maui, Hawaii, and whose mailing address is P. O. Box 220, Kihei, Maui, Hawaii 96753, hereinafter referred to as the "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the fee simple owner of certain real property in Lahaina, County of Maui and State of Hawaii more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, Declarant intends to develop the real property as a business park to be called "THE LAHAINA BUSINESS PARK," with a sense of identity and quality, to preserve the economic value, desirability, attractiveness and utility of THE LAHAINA BUSINESS PARK; and

WHEREAS, Declarant reserves the right to annex additional real property to expand THE LAHAINA BUSINESS PARK; and

WHEREAS, Declarant intends to establish standards for construction and use of THE LAHAINA BUSINESS PARK which will create a theme of architectural style and design, reduce the visual impact of mass, require cohesive landscaping and uniform signage, and control noise, lighting, and nuisance to minimize negative impacts on THE LAHAINA BUSINESS PARK; and

WHEREAS, Declarant is desirous of adopting and establishing certain restrictive covenants and conditions relative to the use of THE LAHAINA BUSINESS PARK for these purposes;

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Exhibit A included in THE LAHAINA BUSINESS PARK and all other real property hereafter included in THE LAHAINA BUSINESS PARK through the process of annexation as provided in these CC&R's, shall, at all times, be owned, held, used, sold, leased, occupied and conveyed subject to the covenants, conditions and restrictions herein contained, all of which are established and declared for the purpose of preserving the economic value, desirability and attractiveness of THE LAHAINA BUSINESS PARK. These CC&R's shall run with said real property for and during the period hereinafter specified and shall be binding upon all persons acquiring any right, title or interest in and to THE

LAHAINA BUSINESS PARK, or any part thereof and their respective heirs, personal representatives, successors and assigns.

ARTICLE I DEFINITIONS

The following words when used in these CC&R's, unless the context otherwise specifies or requires, shall have the following meanings:

1.01 Amending Declaration. "Amending Declaration" means any written instrument prepared and Recorded pursuant to Section 12.03 below whose purpose is to amend the terms of these CC&R's.

1.02 Annexing Declaration. "Annexing Declaration" means any written instrument prepared and Recorded pursuant to Section 11.03 below whose purpose is to annex additional real property to THE LAHAINA BUSINESS PARK.

1.03 Architect. "Architect" means a Person licensed to practice architecture in the State of Hawaii.

1.04 Association. "Association" means THE LAHAINA BUSINESS PARK Association, a Hawaii non-profit corporation, and its successors and assigns.

1.05 Association Property. "Association Property" means all real and personal property owned by, leased or subleased to the Association.

1.06 Board. "Board" means the Board of Directors of the Association.

1.07 By-Laws. "By-Laws" means the By-Laws of the Association.

1.08 CC&R's. "CC&R's" means this Declaration of Protective Covenants, Conditions and Restrictions, as the same may from time to time be amended.

1.09 Charter. "Charter" means the Charter of Incorporation of the Association.

1.10 Common Area. "Common Area" means any real property, including any Lot, owned by, leased or subleased to the Association and all improvements thereon and any easements, licenses or other interests in real property owned or held by the Association.

1.11 Declarant. "Declarant" means West Maui Venture Group, a Hawaii limited partnership, its successors and assigns, including such other Person or Persons whom said West Maui Venture Group may, by a Recorded document, designate as having the powers and functions of Declarant, or some of such powers and functions.

1.12 Dedicated Area. “Dedicated Area” means any Lot or easement, or portion thereof that may be designated, established, or created for a specific use or purpose, such as a roadway, access easement, waterline easement, drainage easement, sewer easement, utility easement, or landscaping easement, in the File Plan, a subdivision map or plan, or by the Declarant, in Declarant’s sole and sound discretion. A Dedicated Area may also be a Common Area, and vice versa. Owners may be required to maintain a Dedicated Area if it is located within the Owner’s Lot (for example, a landscape buffer area).

1.13 Design Review Committee. “Design Review Committee” means THE LAHAINA BUSINESS PARK Design Review Committee established or to be established pursuant to Article VI below to review plans and specifications for the construction and use of improvements within THE LAHAINA BUSINESS PARK, and to approve or disapprove the same in accordance with these CC&R’s and the Design Standards.

1.14 Design Standards. “Design Standards” means the development standards and design rules referred to in Article VI below which establish certain standards and procedures for the construction of improvements within THE LAHAINA BUSINESS PARK, for the maintenance of Lots, and in order to carry out the intent of these CC&R’s.

1.15 Emission. “Emission” means any odor, dust, smoke, gas, noise, vibration, radiation, light, heat, vapor, microwave, radio wave, or other irritant or nuisance which may be released, produced or discharged into the environment.

1.16 File Plan. “File Plan” means the Subdivision File Plan of “The Lahaina Business Park Subdivision” filed in the Bureau of Conveyances of the State of Hawaii.

1.17 THE LAHAINA BUSINESS PARK. “THE LAHAINA BUSINESS PARK” means and refers to the land described in Exhibit A attached hereto and such additional land as may be annexed pursuant to Article XI below.

1.18 Landscape Architect. “Landscape Architect” means a person licensed to practice landscape architecture in the State of Hawaii.

1.19 Lot. “Lot” or “Lots” means any legally subdivided Lot or Lots in THE LAHAINA BUSINESS PARK or any real property annexed to THE LAHAINA BUSINESS PARK pursuant to Article XI below.

1.20 Member. “Member” means any Person who is a member of the Association pursuant to Article III below.

1.21 Owner. “Owner” means any one or more Persons as the case may be (including Declarant) who is or are the Record owner or owners of a fee simple interest in a Lot; PROVIDED, HOWEVER, that to such an extent and for such purpose, including voting,

as shall be provided in a lease or agreement of sale covering all of the Owner's interest in any Lot which has been Recorded and a copy filed with the Association, the lessee under such lease or vendee under such agreement of sale shall be deemed the Owner thereby while the same is in effect. However, in the event of a dispute or conflict between the fee owner and such lessee or vendee as to who shall be the Owner for purposes of these CC&R's, then the fee owner shall be the Owner until such dispute or conflict is resolved. Any Person who holds any interest in a Lot merely as security for the performance of any obligation shall not be deemed an Owner.

1.22 Person. "Person" means a natural individual, corporation, partnership or any other legal entity.

1.23 Points. "Points" are numerical figures assigned to a Lot to fix the proportionate share of the total assessments levied by the Association to be borne by the Owner of that Lot, the proportionate voting power of the Owner of that Lot in the Association and the proportionate interest of the Owner of that Lot in distributions made by the Association. Points shall be assigned to Lots on the basis of square footage, and each Lot shall be assigned on (1) Point for each 1,000 square feet of the land area of such Lot, including fractional Points, rounded to the nearest one-hundredth of a Point; provided, however, that any Lots designated as "Dedicated Area" shall be assigned no Points.

1.24 Record. "Record", "Recorded" or "Recordation" means, with respect to any document, the recordation or filing of such document in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate.

1.25 Structural Engineer. "Structural Engineer" means a Person who performs consultation, investigation, evaluation, planning and/or design services in connection with the structural integrity of buildings and other structures and is licensed as a professional engineer in the State of Hawaii.

1.26 Subdivision. "Subdivision" means a parcel of real property legally divided or separated into lots as shown on a subdivision plan in accordance with all applicable laws, including the Subdivision Ordinance of the County of Maui.

ARTICLE II. LIMITATIONS ON USE.

2.01 Permitted Uses Within THE LAHAINA BUSINESS PARK. Lots within THE LAHAINA BUSINESS PARK shall be used solely for the uses and purposes permitted pursuant to these CC&R's and under the applicable zoning laws and regulations for such Lots, including applicable Zoning Ordinances of the County of Maui; provided, however, that no use which would create an unsafe, obnoxious or offensive impact on office, commercial or light industrial uses by reason of the production, creation, release or discharge

of any Emissions shall be permitted within THE LAHAINA BUSINESS PARK, unless appropriate mitigating measures to control such Emissions which have been approved by the Design Review Committee are in full operation and effect, as determined by the Design Review Committee.

2.02 Approval by Design Review Committee. These CC&R's and the Design Standards shall govern the right of an Owner to construct, reconstruct, refinish, alter or maintain any improvements upon, under, within or above THE LAHAINA BUSINESS PARK, to make any change in the natural or existing contour or drainage, to install any utility lines or conduits within THE LAHAINA BUSINESS PARK, or to allow the production, creation, release or discharge of any Emissions on any Lot. No new buildings, landscaping or improvements or material alterations to existing buildings, landscaping or improvements shall be constructed, reconstructed or placed on any Lot, and no excavation, fill or grading shall be permitted on any Lot, except in accordance with plans, specifications, and other materials approved by the Design Review Committee, and in accordance with the applicable Design Standards. For purposes of this Section 2.02, "material alteration" shall mean any alteration or change (i) in the color, texture or appearance of the exterior of any existing building or improvement, or (ii) in the shape or size of any existing building or improvement, or (iii) in the appearance of any landscaping, or (iv) which costs \$5,000.00 or more, or (v) which would affect the control of Emissions on any Lot. The Design Review Committee shall not approve any work, grading, fill, excavation, landscaping, or improvements which is inconsistent with the provisions of these CC&R's.

2.03 Removal of Nonconforming Improvements. The Declarant, and/or the Association, upon the request of the Design Review Committee, and after reasonable notice to the offender and the Owner, may remove any improvements constructed, reconstructed, refinished, altered or maintained on any Lot in violation of these CC&R's, and/or may restore a Lot to its state existing prior to any grading, excavation, fill, alteration, construction or other work on such Lot in violation of these CC&R's, and the Owner of such Lot shall immediately reimburse the Declarant, or Association, as appropriate, for all expenses incurred in connection with such removal and/or restoration. All such expenses incurred by the Association which are not so immediately reimbursed shall be specially assessed against the Owner of such Lot, and such Special Assessment shall be secured by the lien created under Section 5.08 below. If such Special Assessment becomes delinquent, the Association may take any of the actions described in Section 5.09 below, including, without limitation, the filing of a Notice of Delinquency and Statement of Lien, and foreclosing on such lien, as provided in Section 5.10.

2.04 Subdivision of Lots. A Lot may be subdivided into two or more parcels in accordance with the following conditions:

- (a) The Owner of such Lot shall comply with all applicable laws, including the requirements of the Subdivision Ordinance of the County of Maui; and

(b) The Owner of the Lot shall establish appropriate landscape setback areas within each subdivided parcel consistent with such setback areas in the other Lots in THE LAHAINA BUSINESS PARK, and the location and area of such setbacks shall have been approved by the Design Review Committee prior to such Owner's submission of any application for subdivision approval; and

(c) The Design Review Committee members shall have been compensated pursuant to Section 6.11 below; and

(d) The Owner of the Lot so subdivided shall provide the Association and Declarant with copies of the final subdivision map and approval from the County of Maui. Upon receipt of such subdivision map and approval, the Association shall recalculate the number of Points to be assigned to each subdivided parcel and shall provide written notice of such reassignment of Points to the Owner. Each subdivided parcel shall be deemed to be a Lot hereunder.

2.05 Consolidated Lots. Two or more adjoining Lots within THE LAHAINA BUSINESS PARK which are under the same ownership may be consolidated and developed as one Lot, in accordance with the following conditions:

(a) The Lots shall be legally consolidated in accordance with all applicable laws, including the Subdivision Ordinance of the County of Maui; and

(b) The landscape setback areas originally designated within such Lots shall be maintained, or if altered in any manner, such alteration shall have been approved by the Design Review Committee prior to such Owner's submission of any application for consolidation; and

(c) The Design Review Committee members shall have been compensated pursuant to Section 6.11 below; and

(d) The Owner of the Lots so combined shall provide the Association and the Declarant with copies of the final subdivision (consolidation) map and approval from the County of Maui. Upon receipt of such subdivision (consolidation) map and approval, the Association shall recalculate the number of Points to be assigned to such newly consolidated Lot and shall provide written notice of such reassignment of Points to the Owner; and

(e) Existing easements along the common boundary line of the Lots to be combined may be changed provided that the prior written

consents of the Declarant and the Association are obtained and provided that alternate easements are granted or created, satisfactory to the Declarant and the Association, by the Owner of the Lots to be consolidated. If existing easements along the common boundary line of Lots are changed, then the consolidated Lot shall thereafter be deemed one Lot, and may not thereafter be split or subdivided except as provided in Section 2.04.

2.06 Construction of Subdivision Improvements. Notwithstanding any provisions contained herein to the contrary, any work performed by Declarant, its representatives, agents, employees or contractors in or about THE LAHAINA BUSINESS PARK and any land annexed or to be annexed pursuant to Article XI herein, including, but not limited to construction of subdivision improvements required by the County of Maui and any roadways or any electrical, communication, water, sewer, or other utilities, and drainage facilities shall be permitted without the prior written approval of the Design Review Committee. Declarant, its representatives, agents, employees or contractors shall be exempt from these CC&R's, and may proceed with such work without complying with the provisions of these CC&R's.

2.07 Reservation of Right to Consolidate, Resubdivide, Etc. Declarant reserves the right to consolidate and resubdivide two or more adjoining Lots within THE LAHAINA BUSINESS PARK, and to designate Dedicated Areas, whether or not shown on any File Plan or subdivision map, including the right to create, expand, or alter new or existing roadway lots and easements, without the prior written approval of the Design Review Committee.

ARTICLE III. THE ASSOCIATION.

3.01 General Purposes and Powers. THE LAHAINA BUSINESS PARK Association has been or will be incorporated to be and constitute the Association to which reference is made in these CC&R's. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Charter.

3.02 Membership. Each Person who is an Owner of a Lot shall be a Member of the Association and no person other than such an Owner may be a Member of the Association. In the event that additional Lots are annexed to THE LAHAINA BUSINESS PARK pursuant to Article XI, membership in the Association shall commence with respect to such Lots on the first day of the first calendar month following such annexation.

3.03 Voting Rights. Each Member other than Declarant shall have one vote for each Point assigned to his Lot. The Declarant shall have five (5) votes for each Point assigned to any Lot owned by Declarant. In the event of multiple Owners of the same Lot, the multiple Owners shall, prior to each meeting of Owners, provide the Board with a written statement, signed by each such multiple Owner, designating one Person who shall have the

right to cast the votes assigned to the Lot owned by such multiple Owners. In the event that such multiple Owners fail to provide the Board with such written statement, the votes for such Lot may be exercised by any one of them present at any meeting in the absence of protest by the other Owner(s). In case of any protest by any other Owner, the voting rights for such Lot may not be exercised until such multiple Owners provide the Board with such a written statement designating the one Person who shall have the right to cast the votes. Voting by proxy shall be permitted. The right of each Owner to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the estate of an Owner in his Lot shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. The right of each Owner to vote shall be subject to suspension as provided in Sections 4.09 and 5.09 below.

3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee composed of not fewer than three (3) Directors. The number and qualifications of Directors shall be as provided in the Charter and By-Laws of the Association.

3.05 Quorums. The presence of twenty-five percent (25%) of the voting power of the Association, in person or by proxy, at a meeting to consider a matter shall constitute a quorum for consideration of that matter. Except as a greater percentage of votes is required by law, under a specific provision of these CC&R's, or of the Charter or By-Laws, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

3.06 Charter and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to Members of the Association set forth in these CC&R's may be amplified by provisions of the Charter and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, in direct conflict with any provision of these CC&R's, the provisions of these CC&R's shall prevail.

3.07 Notification of Association. Each Owner shall within ten (10) days of any sale, transfer or conveyance of any interest in the Owner's Lot notify the Association of such sale, transfer or conveyance.

ARTICLE IV. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

4.01 Association Rights in Lots. The Association and the Design Review Committee shall have the right, upon not less than 72 hours prior written notice, to enter upon any Lot for inspection purposes and/or to enforce these CC&R's.

4.02 Maintenance of Association Property. The Association shall be obligated to provide for the care, operation, management, maintenance, repair and replacement of Association Property. Without limiting the generality of the foregoing, said obligations shall include keeping Association Property in good, clean, attractive and sanitary condition, order and repair; repairing wind and other damage caused by the elements; and making necessary or desirable alterations, additions, betterment's or improvements to or on Association Property.

4.03 Association Obligations With Respect to the Dedicated Area. Declarant may convey any Dedicated Area, or any portion thereof, to the Association, including easements for roadway and landscaping purposes; provided that in the event that the Dedicated Area or any portion thereof is dedicated and conveyed to the State of Hawaii, County of Maui or any other governmental authority, such easements shall immediately terminate. Unless otherwise designated by Declarant, all roadway lots and rights-of-way within THE LAHAINA BUSINESS PARK shall be designated as Dedicated Areas. The Association shall assume all obligations of the Declarant to upkeep, maintain, operate and repair the roadway, landscaping and irrigation improvements within the Dedicated Areas and THE LAHAINA BUSINESS PARK, and shall comply with any maintenance standards set forth in these CC&R's and the Design Standards. The Association shall also be responsible for performing all of the obligations of Declarant pursuant to any agreements with the County of Maui pertaining to maintenance of Dedicated Areas, including, without limitation the obligation to indemnify, defend and save harmless the County and its legal successors from any and all liability from property damage, personal injury or otherwise, which may arise from the upkeep, maintenance, operation and repair of said improvements, but excluding any obligation with respect to the initial construction and installation of said improvements.

The Association's responsibilities with respect to the upkeep, maintenance, operation and repair of the landscaping and irrigation improvements within the Dedicated Areas and THE LAHAINA BUSINESS PARK AREA may continue notwithstanding any such dedication and conveyance of the Dedicated Areas to the County. Until such time that the Dedicated Area is conveyed and dedicated to and accepted by the County of Maui or other governmental authority, the Association shall also be responsible for the upkeep, maintenance and repair of the roadway improvements within the Dedicated Area. Any extraordinary costs of upkeep, maintenance or repair incurred as a result of excessive or extraordinary use by Owner of any Lot shall be specially assessed against such Owner, and such Special Assessment shall be secured by the lien created under Section 5.08 below; and if such Special Assessment becomes delinquent, the Association may take any of the actions described in Section 5.09 below; including, without limitation, the filing of a Notice of Delinquency and Statement of Lien, and foreclosing on such lien, as provided in Section 5.10.

4.04 Labor and Services. The Association may obtain and pay for the services of any Person to manage its affairs, or any part thereof, to the extent it deems advisable, as well as the services of such other personnel, including independent contractors, as the Association shall determine to be necessary or desirable for the proper operation of the

Association, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts. The Association may grant such Person the exclusive right to use some Association Property for the benefit of all, some or any of its Members.

4.05 Association Functions. The Association may undertake or contract for any lawful activity, function or service for the benefit of its Members. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder. The activities, functions or services undertaken or contracted for by the Association shall include, without limitation, the providing of legal and accounting services necessary or desirable in connection with the enforcement of these CC&R's; the granting or conveying of easements or rights of way over, across, along or under any real property of the Association; the enforcement of all rights granted to the Association in any lease, sublease, easement, license, or other instrument; the enforcement of these CC&R's, the Rules and Regulations, the Design Standards, the Charter and the By-Laws; and the promotion of THE LAHAINA BUSINESS PARK to benefit the Owners.

4.06 Personal Property of Association. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

4.07 Real Property of Association. The Association shall accept fee simple title to, or a leasehold or subleasehold interest in, or grants of easement, licenses or other rights in all real property from time to time conveyed, leased or granted to it by Declarant or at the direction of Declarant, provided that the Association need not accept any such real property subject to a lien upon such real property securing or evidencing an obligation to pay money except a lien for nondelinquent real property taxes and assessments. Without limiting the generality of the foregoing:

(a) The Association shall accept from Declarant (or from such other person designated by Declarant), easement rights to any Lot or portion thereof which shall serve as a major point of identification for THE LAHAINA BUSINESS PARK ("Entry Zone Common Area"), and the Association shall, at all times, upkeep, maintain and repair the entry signage, paving, landscaping and/or lighting within the Entry Zone Common Area, in compliance with the standards set forth herein and in the Design Standards; and

(b) In the event that other real property is annexed pursuant to Article XI below, the Association shall accept from Declarant (or from such other person designated by Declarant), easement rights, a license or other rights to any Lot or portion thereof which shall serve as another major point of identification for THE LAHAINA BUSINESS PARK ("Other Entry Zone Common Area"), and the Association shall at all times upkeep, maintain and

repair the entry signage, paving, landscaping and/or lighting within the Other Entry Zone Common Area in compliance with the standards set forth herein and in the Design Standards.

4.08 Rules and Regulations. Subject to the provisions of these CC&R's, the Association may make, amend, repeal and enforce reasonable and uniformly applied rules and regulations ("Rules and Regulations") governing use, maintenance, and activities with THE LAHAINA BUSINESS PARK, including, and without limitation, the following:

- (a) the use of Association Property;
- (b) the control of animals;
- (c) the enforcement of any restrictions on use of Lots pursuant to these CC&R's and the Design Standards;
- (d) parking restrictions and limitations;
- (e) the establishment of maintenance standards for Lots;
- (f) a schedule of fines for the violation of the Rules and Regulations, the Design Standards, the Charter, By-Laws and these CC&R's.

The Association shall furnish each Member with a written copy of the Rules and Regulations adopted pursuant to this Section 4.08; provided however, that failure to furnish said copy shall not be deemed to invalidate said Rules and Regulations to any extent.

4.09 Fines and Penalties. The Association, through the Board of Directors, shall have the right to enforce any of the Rules and Regulations, the Design Standards and the obligations of any Owner under these CC&R's or any provision of the Charter or By-Laws by imposing fines in accordance with the Rules and Regulations, by suspending the right of such owner to use Association Property and/or suspending the right of such Owner to vote at meetings of the Association; provided that such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation; and provided further that if any such violation continues for a period of ten (10) days after notice of such violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new fines and penalties. The Board shall not impose a fine, or a use and/or voting suspension for a violation other than the failure to pay an Assessment when due, until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has, in writing, waived such right. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing. In addition to the rights provided in this Section 4.09, the Association and the Board may also take judicial action against any Owner to enforce compliance with these

CC&R's, the Rules and Regulations and/or the Design Standards or any other obligations of Owners hereunder or to obtain damages for noncompliance, all to the extent permitted by law.

4.10 Association Right to Charge Fees. The Association may charge reasonable fees for the use of Association Property as the Board shall determine.

4.11 Dedication of Land. The Association may dedicate, grant easements in or transfer any part of the Common Area to any public agency, authority or utility.

4.12 Grant of Easements. Upon the request of the Declarant, the Association shall grant or consent to the grant of easements in the Common Areas, the Dedicated Area, or any part thereof for access, utilities and other such purposes, to the Declarant or to such other parties as the Declarant shall designate.

4.13 Real Property Taxes. The Association shall pay all property taxes, assessments, rates and charges levied on or against any portion of Association Property. The Association may contest, by appropriate legal proceedings commenced before the same become delinquent, and conducted in good faith and with due diligence, the amount, validity or application of any taxes, assessments, rates or charges. The Association shall not be required to pay the contested amount until final determination of such contest; provided, however, that the Association shall pay all such taxes, assessments, rates and charges, together with all connection therewith, forthwith upon the commencement of proceedings to foreclose any lien which attached to such property or any part thereof as security therefor, or within such foreclosure proceedings.

4.14 Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by these CC&R's, or reasonably to be implied from the provisions of these CC&R's, or given or implied by law, duties, obligations, rights or privileges.

4.15 ROW Improvements, Railroad Improvements, and Highway Widening Lot. In conjunction with the development of THE LAHAINA BUSINESS PARK, the Declarant entered into that certain Roadway Maintenance Agreement with Hawaii Omori Corporation ("OMORI") dated May 4, 1999, recorded or to be recorded in the Bureau of Conveyances, which obligates Declarant to pay:

(a) 50% of all necessary and reasonable costs to maintain and insure Lot 5 of the Hawaii Omori Mauka Subdivision (88 feet wide roadway lot) area 1.935 acres, more or less, ("ROW") together with all improvements thereon ("ROW Improvements");

(b) 50% of the pro-rata share of all reasonable and necessary costs to insure the portion of Lot 1-A-2 of the Honoapiilani Highway Widening Subdivision (vicinity of Kenui Street to Kapunakea Street), area 15,339 square feet or 0.352 acre,

more or less ("Highway Widening Lot") that is used for access to THE LAHAINA BUSINESS PARK; and

(c) All costs to maintain the portion of ROW which is leased to Railroads of Hawaii, Inc. and used by Lahaina-Kaanapali & Pacific Railroad, including a railroad crossing ("Railroad Improvements").

Payment for such maintenance and/or insurance costs shall be made within thirty (30) days of billing, and shall accrue interest at the rate of twelve percent (12%) per annum if not paid within said thirty (30) days.

Each Lot and the Owner(s) thereof shall be responsible for a pro-rata share of Declarant's share of the maintenance costs and/or insurance costs under said Roadway Maintenance Agreement.

OMORI, and its successors and assigns shall have the right to file a lien against any Lot for the applicable pro-rata share of any unpaid maintenance and/or insurance costs for the ROW and ROW Improvements, the Highway Widening Lot, and/or the Railroad Improvements, by recording a Notice of Lien in the Bureau of Conveyances of the State of Hawaii or Office of the Assistant Registrar of the Land Court of the State of Hawaii, as the case may be.

OMORI, and its successors and assigns, shall have the right to foreclosure upon such lien in a manner similar to the foreclosure of a mortgage of real property under Chapter 667, Hawaii Revised Statutes.

ARTICLE V. ASSESSMENTS.

5.01 Assessments. Each Owner, or, in the event of multiple Owners of the same Lot, such multiple Owners jointly and severally, shall be obligated to, and shall pay to the Association amounts hereinafter provided based on each Point assigned to the Lot owned by such Owner, which amounts are herein call "Assessments". Assessments shall include "Regular", "Supplementary" and "Special" Assessments. Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Owner and Member shall comply with all such determinations. Notwithstanding anything to the contrary contained herein, no Assessments in excess of \$5,000.00 for any purpose other than the upkeep, maintenance and repair of Association Property, Common Area or Dedicated Area, or the common advertising and promotion of THE LAHAINA BUSINESS PARK shall be made in any fiscal year of the Association without the consent of seventy-five percent (75%) of the voting power of the Association.

5.02 Determination of Budgets and Assessments. The fiscal year of the Association shall be the calendar year. Within sixty (60) days of prior to the commencement of each fiscal year or partial fiscal year, the Board shall determine the total amount to be raised by Regular Assessments during such fiscal year or partial fiscal year. The amount to be raised by Regular Assessments for any fiscal year or partial fiscal year shall be determined in the following manner: The Board shall prepare or cause to be prepared and approve a budget for the fiscal year or partial fiscal year showing, in reasonable detail, the estimated operating costs and expenses which will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry over reserve for the next fiscal year (the "Operating Budget"). The Operating Budget shall include, without limitation (a) amounts that are required to operate the Design Review Committee and enable it to carry out its functions, (b) amounts required for the upkeep, maintenance and repair of Association Property, the Common Area, the Dedicated Area, and Declarant's share of the maintenance and/or insurance costs for the ROW, ROW Improvements, Highway Widening Lot, and/or Railroad Improvements under the Roadway Maintenance Agreement with Hawaii Omori Corporation, dated May 4, 1999, described in Section 4.15 above, and (c) amounts for common advertising and promotion of THE LAHAINA BUSINESS PARK. The Board shall subtract from the Operating Budget the amount equal to the anticipated surplus attributable to Assessments collected but not disbursed in the fiscal year or partial fiscal year immediately preceding the fiscal year or partial fiscal year for which the Operating Budget has been prepared. Alternatively, the Association may elect to refund a portion of said anticipated surplus to the Members and to subtract the balance of said anticipated surplus from the Operating Budget. However, the portion refunded to Members may not exceed the portion (if any) of said collected but undisbursed Assessments that, if not refunded to the Members, would constitute "exempt function income" under and for purposes of Section 528 of the Internal Revenue Code of 1954, as amended. The Board shall furnish a copy of the Operating Budget to each Member.

If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Members of the amount of such Regular Assessments for any fiscal year or partial fiscal year, then the amounts of Regular Assessments shall be deemed to be the amount assessed in the previous fiscal year or partial fiscal year.

5.03 First Assessments. Prior to the completion by Declarant of the construction of the subdivision improvements for THE LAHAINA BUSINESS PARK, as required by the County of Maui pursuant to the Agreement For Subdivision Approval, the Association shall estimate the costs and expenses to be incurred by the Association from the time of such completion of construction until the commencement of the first full fiscal year of the Association. The estimate shall be assessed to each Member as provided in Section 5.05 below as a Regular Assessment as of the date of the completion of construction of subdivision improvements described in this Section 5.03. Declarant shall be responsible for the

Assessments on Lots which it owns. All costs and expenses incurred prior to such completion of construction shall be the sole responsibility of Declarant.

5.04 Supplementary Assessments. In addition to Regular Assessments, the Association may levy Supplementary Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying any expense incurred or to be incurred as provided in these CC&R's, including the acquisition of Association Property; or (ii) to cover the deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined and assessed by the Association.

5.05 Apportionment of Regular and Supplementary Assessments. The amount of the Regular or Supplementary Assessment for any fiscal period payable by an Owner for each Lot owned by such Owner shall be computed by multiplying the total amount to be raised by such Assessments by a fraction, the numerator of which shall be the number of Points assigned to such Lot, and the denominator of which shall be the total number of Points then assigned to all Lots within THE LAHAINA BUSINESS PARK. In the event that additional Lots are annexed to THE LAHAINA BUSINESS PARK pursuant to Article XI, Assessments shall commence with respect to such Lots on the first day of the first calendar month following such annexation.

5.06 Special Assessments. In addition to Regular Assessments and Supplementary Assessments, the Association may levy Special Assessments, payable by such Owners and over such period as the Association may determine, for (a) expenses which are incurred or to be incurred by the Association as provided in these CC&R's for the benefit of fewer than all of the Owners, (b) monetary fines assessed against an Owner pursuant to these CC&R's, the Design Standards or the Rules and Regulations and not paid when due, (c) expenses which are incurred or to be incurred by the Association which are necessitated by the negligence, misuse or neglect of any Owner, or by the extraordinary or excessive use of any Association Property, Common Area, Dedicated Area, the ROW, ROW Improvements, the Highway Widening Lot, or the Railroad Improvements, by any Owner or (d) expenses which are incurred or to be incurred by the Association as a result of any Owner's act or failure or refusal to act or otherwise comply with the provisions of these CC&R's, the Design Standards, the Rules and Regulations, or any other rules and/or regulations promulgated pursuant to these CC&R's.

5.07 Time for Payments. The amount of any Assessment, charge or other amount payable with respect to any Owner or such Owner's Lot, shall become due and payable as specified by the Board and, in any event, within thirty (30) days after any notice of the amount due as to such Assessment, charge, or other amount shall have been given by the Association to such Owner, and any such amount shall bear interest at a rate specified by the Board but in no event greater than the maximum amount permitted by law from the date due and payable until paid.

5.08 Lien for Assessments and Other Amounts. The Declarant, for each Lot it owns within THE LAHAINA BUSINESS PARK , and each Owner of a Lot, by acceptance of a deed or other conveyance of such Lot, whether or not it shall be so expressed in such deed or conveyance, covenants and agrees to pay to the Association the Regular Assessments, Supplementary Assessments and Special Assessments assessed against the Owner's Lot as provided herein. All Assessments, including Regular, Supplementary and Special Assessments, together with late charges, interest, costs and reasonable attorneys' fees, shall be a charge on the Lot and the Association shall have a continuing lien against the Owner's interest in such Lot to secure payment of any such Assessment, charge or other amount due and owing to the Association with respect to the Owner or with respect to such Owner's Lot, plus late charges, and interest as provided in Section 5.07, from the date due and payable until paid, plus all costs and expenses of collecting the unpaid amount, including attorneys' fees.

In addition, Hawaii Omori Corporation shall have lien and foreclosure rights under the Roadway Maintenance Agreement with Declarant dated May 4, 1999, as set forth in Section 4.15 above.

5.09 Effect of Nonpayment of Assessment; Remedies of Association. Any Assessment, whether Regular, Supplementary or Special, or any installment thereof, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an Assessment or installment thereof becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (a) assess a late charge of at least \$100 per delinquency;
- (b) assess interest thereon as provided in Section 5.07 above;
- (c) suspend the voting rights of the Owner during any period of delinquency;
- (d) accelerate all remaining Assessment installments for the fiscal year in question so that the unpaid Assessment for the remainder of the fiscal year shall be due and payable immediately;
- (e) bring an action at law against any Owner personally obligated to pay Assessments;
- (f) file a Notice of Delinquency and Statement of Lien with respect to the Lot, and foreclose on the lien as more fully set forth in Section 5.10 below.

Any such action shall be in addition to any other remedies provided by law for the enforcement of such obligations.

5.10 Foreclosure of Lien. In the event that any Regular, Supplementary or Special Assessment is delinquent, the Association may file a Notice of Delinquency and Statement of Lien by Recording a written statement with respect to the Lot, setting forth the name(s) of the Owner(s), the legal description of the Lot, the name of the Association and the amount of delinquent Assessments then owing, which statement shall be duly signed and acknowledged by an officer or director of the Association or by a managing agent retained by the Association to perform any or all of the Association's functions hereunder. A copy of such statement shall also be mailed to the Owner(s) at the address of the Lot or at such other address as the Owner(s) has provided in writing to the Association. The Association may proceed to foreclose the lien in the manner for foreclosure of mortgages in the State of Hawaii. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such obligations.

In addition, Hawaii Omori Corporation shall have lien and foreclosure rights under the Roadway Maintenance Agreement with Declarant dated May 4, 1999, as set forth in Section 4.15 above.

5.11 Liability of Owners and Purchasers. The amount of any Assessment or charge owing to the Association by any Owner under these CC&R's shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

5.12 Declarant Exempt. Notwithstanding any other provision contained herein or any other related documents, the Declarant shall be exempt from any and all assessments and dues arising from ownership of any Lots or from being a Member of the Association; provided however, that this exemption shall not affect any benefits or rights, including voting rights under Section 3.03. In determining assessments, the apportionments under Section 5.05 shall be computed by excluding Points assigned to any Lots owned by the Declarant.

ARTICLE VI. DESIGN REVIEW COMMITTEE.

6.01 Creation. THE LAHAINA BUSINESS PARK Design Review Committee ("Design Review Committee") is hereby created with all of the rights, powers, privileges and duties herein set forth. The Design Review Committee shall consist of a minimum of three (3) members as the Declarant or the Board, whichever then has the right to appoint and remove members of the Design Review Committee, shall from time to time determine.

6.02 Term. The initial Design Review Committee shall be appointed by Declarant for a two-year period or such other term as determined by the Declarant. Members

of the Design Review Committee appointed by the Board shall serve for such terms as determined by the Board.

6.03 Appointment. The Declarant shall have the sole right to appoint and remove the members of the Design Review Committee until the twentieth (20th) anniversary date hereof, or until the Declarant shall assign said right to appoint and remove (in whole or in part) to the Board, whichever shall first occur. Thereafter, the Board shall have the sole right, and the obligation to appoint and remove the members of the Design Review Committee. The Declarant may, at any time and from time to time during the twenty-year period set forth herein, assign or withdraw such right to appoint and remove members of the Design Review Committee to or from the Board, and the Board shall accept or relinquish such obligation. Written notice of each such appointment and removal must be filed with the Association to be effective.

6.04 Removal; Resignation. Any Design Review Committee member may be removed, with or without cause, by whichever of the Declarant or the Board then has the right to appoint members of the Design Review Committee. Any Design Review Committee member may resign by submitting a written notice to the Declarant or the Board, whichever then has the right to appoint and remove members of the Design Review Committee, stating the effective date of his resignation, and acceptance of the resignation shall not be necessary to make the resignation effective.

6.05 Design Review Committee Functions. The functions of the Design Review Committee, in addition to any functions set forth elsewhere in these CC&R's, shall be to consider and approve or disapprove any plans, specifications or other material submitted to it for the erection, construction, installation, alteration, placement, maintenance or use of any buildings, landscaping or other improvements within THE LAHAINA BUSINESS PARK or for the alteration or remodeling of, or construction of additions to, any then existing structures within THE LAHAINA BUSINESS PARK; to assure that any such building, landscaping or other improvements to be constructed within THE LAHAINA BUSINESS PARK comply with applicable Design Standards; to adopt and amend Design Standards as provided in this Article VI; to provide for the control and abatement of Emissions from Lots within THE LAHAINA BUSINESS PARK; and to perform such other duties as may, from time to time, be delegated to it by the Declarant or the Board. The Design Review Committee shall meet from time to time as necessary to adequately perform its duties hereunder, and the Design Review Committee's action on matters shall be by majority vote of the Committee. Any action required to be taken by the Design Review Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Design Review Committee members. The Design Review Committee shall keep and maintain a record of all actions taken by it.

6.06 Review of Plans. The Design Review Committee shall approve or disapprove said plans, specifications and other materials submitted to it in accordance with the procedures and standards set forth in the Design Standards; provided, however, that the

Design Review Committee's approval or disapproval of any such plans, specifications and other materials shall be given in writing to the Person or Persons applying for said approval at the address set forth in the application therefor, and the Committee's approval or disapproval of the final plans, specifications and other materials shall be given within thirty (30) days after submission of the complete package of said plans, specifications and other materials required by the Design Standards, including, without limitation, the Bond and/or other documents required pursuant to Section 6.09 below.

6.07 Requirements for Plans. All plans and specifications for any new building or other improvement within THE LAHAINA BUSINESS PARK shall be prepared by an Architect or Structural Engineer, shall be submitted to the Design Review Committee for its approval, and shall include a statement of the proposed use of the Lot, the Emissions which will be produced, discharged or created on such Lot, the manner in which Emissions will be mitigated and/or controlled, and such other detail as required by the Design Standards.

6.08 Standards of Review. The Design Review Committee shall, in reviewing plans, specifications and other materials submitted to it, consider their compliance with the use and Emissions restrictions set forth in these CC&R's, the Design Standards and their compatibility with the overall intent of these CC&R's. The Design Review Committee may approve plans which require variances from the Design Standards if in the judgment of the Design Review Committee the plans are compatible with the overall intent and would enhance the desirability, attractiveness and utility of THE LAHAINA BUSINESS PARK. In the event of any conflict or difference of opinion, the decision of the Design Review Committee shall prevail unless such decision is totally arbitrary, unreasonable and without foundation. All plans must be in compliance with State and County law and must include necessary safety requirements.

All variances shall be reviewed and approved or disapproved on a case by case basis. Approval of a variance shall not establish a precedent for approval of future variance applications of a similar nature.

6.09 Bond Requirement. Each Owner shall provide to the Design Review Committee, together with the plans, specifications and other materials required hereunder, and as a condition precedent to any Design Review Committee approval of any final plans, a cash bond in the sum of \$10,000.00, guaranteeing completion (once construction has been commenced) of all the improvements, landscaping and other work (other than interior portions of the improvements which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Design Review Committee. Said \$10,000.00 may be retained and used by the Association upon receipt by the Association of written certification from the Design Review Committee that the improvements, landscaping, Emission abatement and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee, which certification specifies the various deficiencies; and provided, however, that the Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to

cure all such deficiencies; and provided further that the Association shall promptly refund said \$10,000.00 to the Owner upon receipt of written certification from the Design Review Committee that the improvements, landscaping, Emission abatement and other work (other than interior portions of the improvements which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee.

As an alternative to the \$10,000.00 cash bond required above, however, the Owner may provide to the Design Review Committee either of the following:

(a) An owner's completion bond in form and by a corporate surety satisfactory to the Design Review Committee, in its sole discretion, in the penal sum of \$10,000.00 and running in favor of the Association, as obligee, guaranteeing completion (once construction has been commenced) of all of the improvements, landscaping and other work (other than interior portions of the improvements which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Design Review Committee. Such bond shall be unconditional, be effective for a period of at least three (3) years from the date of the Design Review Committee's approval, and be automatically payable to the Association upon written certification by the Design Review Committee that the improvements, landscaping, Emission abatement and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee, which certification specifies the various deficiencies; provided, however, that the Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the Association shall promptly surrender said bond to the Owner upon receipt of written certification from the Design Review Committee that the improvements, landscaping, Emission abatement and other work (other than interior portions of the improvements which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee; or

(b) A promissory note in favor of the Association, in the amount of \$10,000.00, secured by a second mortgage (which mortgage shall be junior only to the purchase money mortgage or the mortgage securing the construction and permanent financing loans, if any, obtained by the Owner and shall be in recordable form and in all respects satisfactory to the Design Review Committee, in its sole discretion) covering the Owner's Lot. Such note shall be in form satisfactory to the Design Review Committee, in its sole discretion, and shall be payable upon demand; provided, however, that such note may provide that the Association may call the note only upon receipt by it of a written certification from the Design Review Committee that the improvements, landscaping, Emission abatement and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee, which certification specifies the various

deficiencies, and that the Owner shall provide to the Association a written certification from the Design Review Committee that the improvements, landscaping, Emission abatement and other work other than interior portions of the improvements which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Design Review Committee.

Notwithstanding any other provision contained herein to the contrary, the bond required under this Section 6.09 shall be waived if the cost of the improvements, landscaping, and/or work requiring the approval of the Design Review Committee is less than \$10,000.00.

6.10 Prosecution of Work After Approval. After approval by the Design Review Committee of any plans, specifications or other materials, the construction, alteration or other work described in such plans, specifications or other materials shall be performed as promptly and diligently as possible and in complete conformity with said plans, specifications or other materials. Failure to commence such construction, alteration or other work within eighteen (18) months after the date of approval, or within such longer time as the Design Review Committee shall specify, or the failure to complete the proposed work strictly in accordance with said plans, specifications or other materials within eighteen (18) months after commencement of the work, shall operate automatically to revoke the approval by the Design Review Committee and, upon demand by the Design Review Committee, the Lot upon which such construction, alteration or other work was undertaken shall be restored by the Owner as nearly as possible to its state existing prior to any such construction, alteration or other work; provided that if said Lot is not so restored the Design Review Committee or the Association may undertake such restoration and charge the cost thereof to the Owner of said Lot, which cost shall be enforceable as a Special Assessment in accordance with Article V above. The rights and remedies provided for in the preceding sentence are cumulative with all other rights and remedies available to the Association and the Design Review Committee under these CC&R's and at law or in equity. The Design Review Committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any construction, alteration or other work. The Design Review Committee may Record a notice to show that any such work has not been approved or that any approval given has been automatically revoked.

6.11 Compensation of Design Review Committee Members. The Design Review Committee members shall be entitled to a reasonable fee for any and all services they may perform pursuant to these CC&R's. The Design Review Committee shall have the right to require from an Owner applying for approval the payment of a reasonable fee for review of proposed plans, specifications and other materials and for the payment of the compensation to the Design Review Committee members.

6.12 Design Standards Adopted By Design Review Committee. The Design Review Committee may from time to time, adopt and amend Design Standards which govern and serve as the development standards for the construction of buildings and improvements to be constructed and maintained within THE LAHAINA BUSINESS PARK, and the control of

Emissions within THE LAHAINA BUSINESS PARK; provided, however, that in the event of a conflict between these CC&R's and the Design Standards, these CC&R's shall control. Such Design Standards may apply to all or some of the Lots within THE LAHAINA BUSINESS PARK as the Design Review Committee shall designate. A copy of all such Design Standards as they may from time to time be adopted, amended, or repealed, as certified by a member of the Design Review Committee, shall be made available by the Association for the inspection of any Owner, or Architect, Structural Engineer, or Landscape Architect or agent of any Owner.

6.13 Design Standards Promulgated By Declarant. The Design Standards attached hereto are hereby adopted as the Design Standards which govern and serve as a standard for the construction of all buildings and improvements to be constructed or maintained within THE LAHAINA BUSINESS PARK and for the control of Emissions within THE LAHAINA BUSINESS PARK and are hereby incorporated herein by reference and made a part hereof, subject to any amendments or repeal thereof as may be made by the Design Review Committee, under the authority granted in Section 6.12 above; provided, however, that in the event of a conflict between these CC&R's and the Design Standards, these CC&R's shall control. The Declarant may, at the time of annexation of any Lot or Lots to THE LAHAINA BUSINESS PARK, include in the Annexing Declaration, the Design Standards applicable only to the Lot or Lots so annexed. The Design Standards included in any such Annexing Declaration shall govern and serve as the standard for the construction of all buildings and improvements on such Lot or Lots, subject to any amendment or repeal thereof as may be made by the Design Review Committee under the authority granted in Section 6.12 above.

6.14 Reconstruction of Improvements. If the improvements on any Lot are damaged or destroyed by fire or other casualty, the Owner of such Lot shall rebuild or repair such improvements in accordance with plans and specifications approved by the Design Review Committee; provided, however, that any such reconstruction after destruction which is accomplished in substantial compliance with the approved plans and specifications pursuant to which such facility was originally construction, shall not require compliance with the provisions of this Article VI, if such reconstruction is completed within eighteen (18) months after the date of such destruction. Unless the reconstruction is undertaken within six (6) months after any such casualty, the Owner shall remove all remains of improvements so damaged or destroyed and return the Lot to good order and condition and even grade within six (6) months thereafter.

6.15 Liability of Design Review Committee Members. Provided that Design Review Committee members act in good faith and with due diligence recognizing that there is no obligation on the part of the Design Review Committee to review for compliance with federal, state and county laws or to ensure for any standards of safety, neither the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, specifications and other materials, whether or not defective; or
- (b) The construction or performance of any work, whether or not pursuant to approved plans, specifications and other materials; or
- (c) The development or manner of development of any land within THE LAHAINA BUSINESS PARK; or
- (d) The execution and Recordation of a form of approval pursuant to Section 6.07, or disapproval pursuant to Section 6.10, whether or not the facts stated therein are correct; or
- (e) The performance of any other function pursuant to the provisions of these CC&R's.

Notwithstanding anything to the contrary contained herein, neither the consent nor approval of the Design Review Committee, nor the approval of any Architect, Landscape Architect, Structural Engineer or other design professional engaged by the Design Review Committee, of any plans, specifications, drawings or other materials submitted to the Design Review Committee shall be deemed to be a warranty or representation on the part of the Design Review Committee that such plans, specifications, drawings or other materials, or the buildings, structures or other improvements described therein are legal or structurally safe or sound.

6.16 Professional Advice. The Design Review Committee may employ the services of an Architect, Landscape Architect, Structural Engineer or other design professional to render professional advice, and may pay a reasonable compensation for such services which compensation may be charged to any Owner who has submitted plans, specifications or other materials requiring review by such Architect, Landscape Architect, Structural Engineer or other design professional; provided that such compensation may only be charged to such Owner if he has been informed in advance of such charges.

ARTICLE VII. USE REQUIREMENTS AND RESTRICTIONS.

7.01 Landscape Easement Areas. All Landscape Easement Areas, or areas or easements designated for landscaping purposes, within THE LAHAINA BUSINESS PARK shall be used only for landscaping, walkways, driveway access, connections to public utilities and business identification signage, and shall be landscaped and maintained in accordance with the requirements of the Design Standards. Landscaping and maintenance plans shall require water conservation and irrigation controls to prevent runoff. The Declarant shall be exempt from this requirement.

7.02 Landscaping of Entire Lot. All portions of the Lots within THE LAHAINA BUSINESS PARK other than the Landscape Easement Areas shall be landscaped and maintained in accordance with the requirements of the Design Standards. Landscaping and maintenance plans shall require water conservation and irrigation controls to prevent runoff. The Declarant shall be exempt from this requirement.

7.03 Temporary Landscaping Requirements. Within one (1) year after the last to occur of (i) the completion of construction of the subdivision improvements for THE LAHAINA BUSINESS PARK, or each phase or section thereof, or (ii) the conveyance of a Lot from the Declarant to an Owner who is not signatory to these CC&R's, or (iii) within such other period of time set forth in an Annexing Declaration with respect to any property annexed hereto, the Owner of such Lot shall temporarily landscape the entire Lot by the planting of at least one (1) tree and the planting of ground cover over the entire Lot, in accordance with landscape plans approved by the Design Review Committee, unless such Owner has commenced construction of other improvements approved by the Design Review Committee within such one (1) year period. Such landscaping shall be maintained in a neat and attractive condition until such time that the construction of other improvements on the Lot has been commenced in accordance with plans and specifications approved by the Design Review Committee. The Declarant shall be exempt from this requirement for any unsold Lot.

7.04 Maintenance. Each Owner shall at all times well and substantially maintain, fertilize, trim and irrigate all landscaping on his Lot in neat and attractive condition. All areas of each Lot not improved with structures, walkways, paved driveways, or parking areas shall be maintained at all times in a fully developed and well-landscaped condition. Each Lot shall be kept clear of rubbish, debris, excessive or dry vegetation, or any other materials and substances that would create a potential fire or health hazard. The Declarant shall be exempt from this requirement, unless Declarant retains and improves such Lot.

7.05 Hazardous Activities and Materials. No activities shall be conducted on any Lot and no improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot.

Hazardous materials, including batteries, shall be stored in sealed containers in covered outdoor areas. Leaking machinery and equipment shall be repaired immediately, or placed on absorbent material to contain the leaks.

7.06 No Unsightliness. The Owner of each Lot shall at all times properly maintain and keep the entire Lot in a safe, clean and sightly condition, in a good state of repair, and shall in all respects comply with all health, fire, police and other governmental rules, regulations and requirements. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within a structure approved by the Design Review Committee or appropriately screened from view in

such manner as approved by the Design Review Committee; (b) all maintenance equipment shall be kept at all times in such an approved enclosed structure or screened from view, except when in actual use; (c) refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; (d) service areas and storage piles shall be appropriately screened from view; (e) pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage and disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; and (f) no lumber, grass, shrub or tree clippings or plan waste, abandoned vehicles or equipment, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot unless specifically approved by the Design Review Committee as being a necessary component of a business.

This Section shall not prohibit the use of any Lot as a baseyard, for a rock crusher to crush rock piles, or other similar uses, provided that such use is in compliance with these CC&R's and receives the approval of the Design Review Committee.

7.07 No Dumping. No dumping of waste, refuse, landscape debris, motor oil, paint, or any other pollutants or materials shall be permitted on any Lot or from any Lot into storm drains or the Kahoma Stream or the Kahoma Flood Control Channel ("Kahoma Stream"), and no Owner of a Lot abutting the Kahoma Stream shall permit any such dumping in or from such Owner's Lot. The Association shall have the right, after reasonable notice to the offender, to clear and/or remove any such waste, refuse or other materials dumped on any Lot or into the Kahoma Stream, and to rectify any damaged caused by such dumping, and the Owner responsible for such dumping shall immediately reimburse the Association for all expenses incurred in connection therewith. All such expenses incurred by the Association which are not immediately reimbursed shall be specially assessed against the responsible Owner, and such Special Assessment shall be secured by the lien created under Section 5.08 above. If such Special Assessment becomes delinquent, the Association may take any of the actions described in Section 5.09 above, including, without limitation, the filing of a Notice of Delinquency and Statement of Lien, and foreclosing on such lien, as provided in Section 5.10 above.

7.08 Control of Emissions. Without limiting the provisions of Sections 2.01, 7.09 or 7.10 hereof, no Emissions which would unreasonably interfere with the use or enjoyment of any Lot in THE LAHAINA BUSINESS PARK shall be produced, released, created or discharged on any Lot, unless appropriate mitigating measures to control such emissions which have been approved by the Design Review Committee, are in full force and effect, as determined by the Design Review Committee.

7.09 Drainage Improvements. The Owner shall design and construct the drainage improvements required as a result of the development of the Lot, including oil/water separators and other filters as appropriate, and the implementation of other best management

practices as necessary to minimize non-point source pollution into the Kahoma Stream, in coordination with appropriate State and County agencies, such as the following:

(a) All cleaning, repairs, maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor. The concrete floor shall be constructed to contain any drips or spills and provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

(b) All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

(c) Barrels for temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code).

In addition to the foregoing, the Owner shall design and construct within his Lot a subsurface infiltration or drainage facility to contain runoff from the building(s) and parking lot(s) within the Lot from a 2-year, 24-hour storm, or a 50-year, 1-hour storm.

All drainage improvements shall be approved by the Design Review Committee, and shall include a plan or schedule for the periodic cleaning and maintenance of all such improvements, including catch basins, subsurface infiltration facilities, and oil/water separators.

7.10 Noise. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Lot and improvements thereon, shall be placed or used upon any Lot. No sound shall be permitted to be emitted on any Lot which is unreasonably loud or annoying.

7.11 Light; Lighting Fixtures. No light shall be emitted from any Lot which is unreasonably bright or which causes unreasonable glare. All exterior lighting shall conform to the requirements of the Design Standards, which Design Standards may govern or prohibit exterior use, inter alia, of mercury vapor lamps or lamps which emit light of a similar character, fluorescent lamps, neon lamps and neon tubing, flashing lights or lamps, unshielded lights, colored lights and spotlights. In addition to complying with said Design Standards, all

light fixtures which are visible from other Lots must be approved by the Design Review Committee.

7.12 Air Quality. The Owner shall participate in an air quality monitoring program as may be established by the State Department of Health.

7.13 Archaeological. Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, during construction of the Lots, Owner shall stop working the immediate vicinity and contact the Association, Declarant, and any appropriate governmental agency.

7.14 No Temporary Structures. No temporary buildings, structures, outhouse sheds or tents shall be erected, placed or permitted to remain on any Lot, except (a) for a field construction office and similar temporary structures used during construction of improvements, and (b) where such building or structure are a necessary component of a business or a Lot (e.g. baseyard office; car lot office; tent sale events; etc.).

7.15 Signs. No signs or advertising devices of any nature shall be erected or maintained on any Lot except signs necessary to identify the address of the trade or business operated on the Lot, and/or the product or service produced and/or sold on the Lot; temporary signs necessary to show that the Lot is for sale or for rent; signs necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; one job identification sign per contractor or subcontractor, the design consultant and other information regarding construction during the period of actual construction on a Lot; a temporary future tenant identification sign listing the names of future tenants of the Lot and identifying the responsible real estate broker; and such other signs as may be otherwise required by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Lot only with the prior written approval of the Design Review Committee, which approval shall be given only if such signs shall be professionally prepared, shall be the attractive design in keeping with the overall character of the area, shall be within the size limitations set forth in the Design Standards, and shall be placed or located as directed or approved by the Design Review Committee, and shall be in compliance with any applicable laws.

7.16 Mining and Drilling. No mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth shall take place on any Lot, except during construction or for the removal of unwanted or undesirable rocks, stones, water, minerals, and the like.

7.17 Clearing and Grading. The clearing and grading of any Lot shall be performed in strict accordance with plans and specifications therefor which have been approved by the Design Review Committee, and such clearing and grading shall not alter or impede existing drainage patterns without the prior approval of the Design Review Committee. All areas cleared shall be left clear of rubbish and litter, and approved ground vegetation shall be re-established. All grading operations shall exercise dust control.

measures, and the areas graded shall be replanted with grass or ground cover approved by the Design Review Committee immediately upon completion of grading.

7.18 Construction Period. During the course of actual construction of any structure or improvement permitted hereunder, the provisions, covenants, conditions and restrictions contained in these CC&R's shall be deemed waived only to the extent necessary to permit such construction, provided that such construction is carried out with all due diligence and that during the course of such construction, nothing is done which will result in a violation of any of said provisions, covenants, conditions and restrictions upon completion of construction.

7.19 Construction Regulations. All construction activities by Owners or contractors (except the Declarant, who is exempt from these conditions) shall be conducted in compliance with the following controls and conditions, and with such other construction rules and regulations set forth in the Design Standards or otherwise adopted by the Design Review Committee:

(a) A 100% performance and lien payment bond must be provided by the contractor for all work undertaken prior to the commencement of such work.

(b) Adequate temporary toilets must be provided for on-site workers.

(c) Adequate temporary water service must be provided.

(d) Adequate temporary on-site power must be provided.

(e) Adequate construction debris control practices must be implemented so as to minimize wind-driven debris, and the Owner or his contractor will be responsible for picking up any debris from adjacent Lots so as to minimize the maintenance burden on Lots. The Owner or his contractor shall be responsible for cleaning up and repairing any damage to other properties.

(f) No on-site burning of scrap will be permitted.

(g) The Owner must provide and keep in force during construction, general liability insurance with minimum limits for bodily injury claims in the amount of \$1,000,000 for each occurrence and for property damage claims in the amount of \$100,000 for each occurrence.

(h) No dumping of excess concrete and wash out of premix concrete trucks shall be permitted in any location except as may be approved by the Design Review Committee.

(i) Noise pollution standards equivalent to the standards set by the County of Maui shall be observed.

(j) During the grading and excavation, and at other times, the Lot must be wet down sufficiently so as to minimize dust problems.

7.20 Blasting. If any blasting is to occur on any Lot, the Design Review Committee and Declarant shall be advised far enough in advance to allow them to make such investigation as they deem appropriate to confirm that appropriate protective measures have been taken prior to such blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Design Review Committee shall in any way release the person conducting the blasting from any and all liability in connection with the blasting, nor shall such approval in any way be deemed to make the Declarant or the Design Review Committee liable for any damage which may occur from blasting, and the person conducting such blasting shall defend, indemnify and hold harmless the Declarant and the Design Review Committee from any such expense or liability. Declarant and/or the Design Review Committee may impose any reasonable restrictions, including time and date restrictions, on all blasting conducted within THE LAHAINA BUSINESS PARK.

7.21 Maintenance of Lots. Each Lot and all improvements, fixtures, furniture and equipment located therein or thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair. Without limiting the generality of the foregoing, each Owner shall regularly maintain, paint, resurface and/or replace the exterior surface of all buildings and other improvements on the Lot, so that the exteriors of all improvements are kept in a neat and attractive condition.

7.22 Owner Caused Damage. If, due to the act or neglect of an Owner or such Owner's guests, employees, agents, or invitees, loss or damage shall be caused to any Association Property, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner, and such amount shall be secured by a lien on the Lot of such Owner in accordance with the provisions of Section 5.08 above.

7.23 Assignment of Rights or Obligations. An Owner may assign or delegate to another Person some or all of his rights hereunder as an Owner and may enter into any arrangement with such other Person under which such Person shall agree to assume some or all of such Owner's obligations hereunder. The Association shall recognize any such assignment or delegation of rights or arrangement for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with the Association. Notwithstanding the foregoing, no Owner shall be..

permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period he is an Owner.

ARTICLE VIII. EASEMENTS.

8.01 Easements in Lots for Repair, Maintenance, and Emergencies. The Association and its officers, employees, agents and representatives shall have an easement upon, across, over, in and under each Lot in order to make emergency repairs thereon necessary to prevent damage to Association Property or to another Lot and to perform the duties and functions which the Association is required or permitted to perform pursuant to these CC&R's, including the right to perform maintenance to the landscaping or the improvements on any Lot and to remove any improvements constructed on any Lot in violation of these CC&R's. Nothing herein shall be deemed to obligate the Association to make any such emergency repairs or to perform any such maintenance or other work.

8.02 Easements for Construction of Subdivision Improvements/Utilities. There is hereby created and reserved unto Declarant an easement upon, across, over, in and under each Lot within THE LAHAINA BUSINESS PARK for ingress and egress and for installation, replacement, repair and maintenance of all subdivision improvements, including roadways, water, sewer, gas, telephone, electrical, cable television, communications, and other utility lines and equipment. Pursuant to this reserved easement, the Declarant and/or the appropriate utility companies shall be expressly permitted to install and maintain necessary equipment on the Lots within THE LAHAINA BUSINESS PARK and to affix and maintain electrical, communications and telephone wires, circuits, and conduits under the Lots. No water, sewer, gas, telephone, electrical, or communications lines, systems or facilities may be installed or relocated on the surface of the Lots unless approved by the Design Review Committee.

8.03 Negligence or Willful Misconduct. Any damage to any Lot caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Lot shall be repaired by and at the expense of the Association.

8.04 Flooding and Erosion. No Owner shall permit to be constructed on his Lot any improvements which will create a problem of flooding, erosion or interference with natural water flow or runoff damaging to his Lot or adjacent properties, nor shall any Owner fail to reasonably act so as to minimize runoff damage or interference with the natural flow of storm waters.

ARTICLE IX. INSURANCE.

9.01 Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain fire, liability and other insurance as

hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to do insurance business in the State of Hawaii. All such insurance shall name as insureds Declarant and its designees, the Association, the Board, and all of their officers, directors, employees and agents. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent reasonably practicable, such insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Declarant, the Association, the Board, and any of their officers, directors, employees, invitees and guests; (ii) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Declarant, the Association, the Board, or any of their officers, directors, employees or agents, or of any Member or such Member's employees, invitees and guests; (iii) provide that "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Member or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Member or mortgagee; (iv) contain a standard mortgage clause endorsement in favor of the mortgagee of any part of Association Property except a mortgagee who is covered by other and separate insurance; and (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least sixty (60) days' prior written notice to the Association, the Declarant, and to each mortgagee covered by any standard mortgage clause endorsement. Any insurance policy may contain such deductible provisions as the Board deems consistent with good business practice.

The cost and expense of all insurance obtained by the Association, except insurance obtained at the request of and specifically benefitting any particular Member or group of Members, shall be an expense of the Association.

9.02 Fire Insurance. The Association shall obtain and maintain fire insurance insuring all Association Property against loss or damage caused by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and if available and if deemed appropriate by the Association, all risk coverage. All such insurance shall cover the full insurable replacement cost of said Association Property.

9.03 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury and property damage liability of the Association, its officers, directors, employees and agents and of such Member and each Member's employees and guests, arising in connection with ownership, operation and maintenance, occupancy or use of Association Property with limits of not less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability. To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross liability claims of Members against the Association or other Members and of the Association against Members without right of subrogation.

9.04 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain worker's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

9.05 Insurance by Members. Any insurance policy obtained by a Member shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent reasonably practicable, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, the Board, Declarant, and any of their officers, directors, agents and employees, and against other Members and their employees and guests. A copy of any insurance policy obtained by a Member shall be furnished to the Association upon request of the Association.

9.06 Receipt and Application of Insurance Proceeds. Except as some particular Person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association.

9.07 Other Insurance by Association. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including fire insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

9.08 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Lot, or any Owner-installed improvements upon any Lot, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be payable by the Owner of such Lot.

ARTICLE X. DESTRUCTION, CONDEMNATION AND RESTORATION OF THE LAHAINA BUSINESS PARK.

10.01 Certain Definitions. The following terms shall have the following definitions:

(a) Substantial and Partial Destruction. "Substantial Destruction" shall exist whenever damage or destruction to any improvement or facility which is part of the Common Area is valued at fifty percent (50%) or more of the total assessed value of such improvement or facility; "Partial Destruction" shall mean any other damage or destruction.

(b) Substantial and Partial Condemnation. "Substantial Condemnation" shall exist whenever an entire Lot which is part of the Common Area

is taken under eminent domain or by grant or conveyance in lieu of condemnation, or whenever a taking of a portion of a Lot which is part of the Common Area, under eminent domain or by grant or conveyance in lieu of condemnation is valued at fifty percent (50%) or more of the total assessed value of such Lot and the improvements thereon. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu of condemnation.

(c) Restoration. "Restoration", in the case of any damage or destruction, shall mean restoration of the improvement or facility within the Common Area to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction and in the case of condemnation, shall mean restoration of the remaining portion thereof to a state appropriate for THE LAHAINA BUSINESS PARK.

(d) Available Funds. "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association including funds carried over from the previous fiscal year. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee.

10.02 Determination by the Board. Upon the occurrence of any damage or destruction to the Common Area or any part thereof, or upon a complete or partial taking of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation, the Board shall make a determination as to whether such damage or taking was substantial or partial.

10.03 Restoration of the Common Area. Restoration of the Common Area may be undertaken by the Association, at the discretion of the Board, without a vote of Members in the event of Partial Destruction or Partial Condemnation. Within sixty (60) days after the Board has determined that Substantial Destruction or Substantial Condemnation has occurred, the Board shall send each Member a written description of the Destruction or Condemnation and a ballot on which each Member shall indicate whether or not Restoration is to be undertaken. Restoration shall be undertaken unless Members holding seventy-five percent (75%) of the voting power of the Association vote against such Restoration. In the event the insurance proceeds actually received exceed the cost of Restoration when such Restoration is undertaken pursuant to this Section, the excess shall be either used as determined by the Association, or used to reduce Assessments to be paid by Members.

10.04 Action if Restoration of the Common Area is Disapproved. If Restoration is not undertaken in the event of Substantial Destruction or Substantial Condemnation, the Association shall remove all damaged or destroyed improvements from the Common Area and restore the Common Area to a safe condition.

10.05 Authority of Association to Restore. The Association shall have full power and authority to restore the Common Area whenever Restoration is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration.

10.06 Payment of Proceeds. All insurance proceeds shall be paid to the Association.

10.07 Supplementary Assessment for Restoration. Whenever Restoration is to be undertaken, the Association may levy a Supplementary Assessment payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds.

10.08 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards for a complete taking of the Common Area or a taking of part of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation shall be payable to the Association. The award shall be applied to costs and expenses of Restoration if undertaken and, to the extent not so applied, shall be used as determined by the Board.

ARTICLE XI. EXPANSION OF THE LAHAINA BUSINESS PARK.

11.01 Reservation of Right to Expand. Declarant reserves the right (but shall not be obligated to and no representation or warranty is made with respect thereto) to expand by annexing to THE LAHAINA BUSINESS PARK, any other land located in the vicinity of THE LAHAINA BUSINESS PARK, plus buildings and improvements located thereon whether owned by the Declarant or other party. Such expansion shall not require the consent of any Owners other than Declarant and the owner of the property so annexed (if not owned by Declarant).

11.02 Limitation on Declarant's Right to Expand. Declarant's right to annex such land shall continue for the duration of these CC&R's; provided, however, that Declarant, at its sole option, may provide for an earlier expiration date of its right to annex such land, by Recording an Amending Declaration setting forth such earlier expiration date.

11.03 Annexing Declarations. Such expansion of THE LAHAINA BUSINESS PARK may be accomplished by Recording an Annexing Declaration containing a legal description of the land and setting forth the Points assigned, and such additional or different information, covenants, conditions and restrictions, if any, as are applicable to such additional land. Such Annexing Declaration shall provide that the land so annexed shall, at all times, be owned, held, used and occupied subject to the provisions of these CC&R's.

11.04 Expansion of Definitions. In the event of such expansion, the definitions used in these CC&R's automatically shall be expanded to encompass and refer to THE LAHAINA BUSINESS PARK as so expanded. Thus, for example, "THE LAHAINA BUSINESS PARK" shall mean the land added by an Annexing Declaration or by Annexing Declarations, and reference to these CC&R's shall mean these CC&R's as so modified.

11.05 CC&R's Operative on New Land and Improvements. Any such additional land, buildings and improvements shall be subject to all the terms and conditions of these CC&R's and of such Annexing Declaration, or Declarations upon Recordation of the Annexing Declaration; provided that in the event that any provision of any such Annexing Declaration is inconsistent with any provision of these CC&R's the terms and conditions of these CC&R's shall prevail.

11.06 Scope of CC&R's. No land except that described in Exhibit A and land annexed hereto as provided in this Article XI shall be deemed subject to these CC&R's, whether or not any such land is shown on any file plan or subdivision map filed by Declarant or is described or referred to in any document executed and/or Recorded by Declarant. No designation, on any map Recorded or filed by Declarant, of any parcel, lot or other area as a private area, common area, road street, school or park or as any other type of parcel, lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used or restricted to such use, except with respect to parcels, lots or areas described in said Exhibit A or annexed to THE LAHAINA BUSINESS PARK as herein provided and so designated by Declarant in a Recorded document. No Owner shall acquire nor shall the public nor any public body or agency nor any other Person acquire any interest or rights in any land by reason of such designation or Recording or filing except as aforesaid. Nothing herein or in any amendment hereto or on any maps shall be deemed to be a representation, warranty or commitment that Declarant will commit to THE LAHAINA BUSINESS PARK or subject to these CC&R's any land it may now own or may hereafter acquire other than that described in said Exhibit A.

ARTICLE XII. MISCELLANEOUS.

12.01 Release of Dedicated Lots. Declarant shall have the right and power, without having to obtain the consent or approval of the Association, any Owner or any other Person, to grant or dedicate any Dedicated Area and any Lot owned by Declarant to the County of Maui or the State of Hawaii, or to any other appropriate governmental agency, or to any public or private utility. Notwithstanding any other provision contained in these CC&R's to the contrary, any such grant or dedication of any such Lot(s) may be made by Declarant free and clear of, and no longer subject to, any of the terms, covenants, conditions or restrictions contained in these CC&R's. Upon any such grant or dedication, the release and removal of these CC&R's (and all of the terms, covenants, conditions or restrictions contained herein) as an encumbrance upon the Lot(s) so granted or dedicated may, but need not necessarily, be made effective by Recording in the Bureau of Conveyances of Hawaii and/or

filing in the Office of the Assistant Registrar of the Land Court of Hawaii, a certificate executed by Declarant certifying such grant or dedication of the Lot(s) and noting the release and removal of these CC&R's as an encumbrance upon said Lot(s) pursuant to this Section 12.01.

12.02 Duration of CC&R's. Each of the provisions contained in these CC&R's run with the land and continue and remain in full force and effect for a period of forty (40) years from the date of Recordation of these CC&R's. These CC&R's shall continue and remain in full force and effect thereafter, unless the Owners of not less than 60% of the voting power of the Association vote to terminate and cancel these CC&R's, and a written instrument is signed by such Owners of 60% of the voting power, or signed by two officers of the Association certifying such vote, is Recorded.

12.03 Amendment. Any provision contained in these CC&R's may be amended or changed, and additional provisions may be added hereto (i) by the Recording of a written instrument or instruments specifying the amendment or change, executed by Owners who hold not less than 60 percent of the voting power of the Association (or executed by two officers of the Association certifying that such percentage of the Owners have consented to such amendment) and the Declarant or its assigns; or (ii) by Declarant any time prior to the first sale of an interest in any Lot in THE LAHAINA BUSINESS PARK to a party not signatory to these CC&R's. Section 11.02 above may be amended by Declarant at any time, as provided in Section 11.02.

12.04 Effect of Provisions of CC&R's. Each provision of these CC&R's, and any agreement, promise, covenant or undertaking to comply with each provision of these CC&R's, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of these CC&R's: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in THE LAHAINA BUSINESS PARK or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in THE LAHAINA BUSINESS PARK or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to THE LAHAINA BUSINESS PARK and each Lot and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of THE LAHAINA BUSINESS PARK and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association burdening and encumbering the title to THE LAHAINA BUSINESS PARK and each Lot in favor of the Association. If at anytime during the term of these CC&R's, any Owner purchases or otherwise acquires any interest in his Lot which has not been submitted to the provisions of these CC&R's, said interest so

purchased or otherwise acquired shall thereafter be owned, held, used and occupied subject to the provisions of these CC&R's and to the covenant, conditions and restrictions herein contained, and said Owner shall continue to have the rights and to be subject to the obligations of an Owner as set forth herein.

12.05 Enforcement and Remedies. In addition to any other remedies herein provided, each provision to these CC&R's with respect to an Owner or the Lot of an Owner shall be enforceable by the Association, by Declarant, or by any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in these CC&R's, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith, including attorneys' fees.

12.06 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of these CC&R's and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage or other lien on any Lot taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Lot and listing the name or names of the Owner or Owners of the Lot and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien, no such holder who thereby assumes title to a Lot shall be required to correct past violations hereof with respect to said Lot so long as said Lot is neither occupied nor used by any purpose by such holder but is merely held for prompt resale, and provided that all money obligations accruing pursuant to these CC&R's subsequent to such foreclosure shall be paid by such holder. Any such purchaser on foreclosure shall, however, take subject to all provisions of these CC&R's and shall comply with all covenants, conditions, restrictions and obligations hereunder.

12.07 Construction. The provisions of these CC&R's shall be liberally construed to promote and effectuate the fundamental concepts of THE LAHAINA BUSINESS PARK as set forth in these CC&R's, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over THE LAHAINA BUSINESS PARK.

12.08 Assignment of Powers. Any and all of the rights and powers vested in Declarant pursuant to these CC&R's may be delegated, transferred, assigned, conveyed or released by Declarant to the Association and the Association shall accept the same effective upon the Recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

12.09 Non-Avoidance. No Owner through non-use of the Common Area or by abandonment of his Lot may avoid the burdens or obligations imposed on him by these CC&R's.

12.10 Limited Liability. Neither Declarant, the Association, the Board, nor any member, agent, officer or employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

12.11 Compliance With Laws. Each Owner shall, at Owner's sole cost and expense, comply with all applicable laws, rules, regulations and requirements (hereinafter collectively called "Laws") of all County, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to the Owner's Lot or Lots, and shall faithfully observe all such Laws in the use of such Lot or Lots. In the event of a conflict or inconsistency between the Laws and these CC&R's, the more restrictive provision shall apply. In the event any provision in these CC&R's is prohibited by any Laws, the Laws shall prevail.

Compliance with these CC&R's shall not relieve an Owner from Owner's obligation to comply with any Laws.

12.12 Successors and Assigns. These CC&R's shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner and the heirs, personal representatives, successors and assigns of each.

12.13 Severability. Invalidity or unenforceability of any provision of these CC&R's in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of these CC&R's.

12.14 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of these CC&R's.

12.15 No Waiver. Failure to enforce any provisions of these CC&R's shall not operate as a waiver of any such provision or of any other provision of these CC&R's.

12.16 Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of these CC&R's.

12.17 Notices. Any notice, information or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material.

Any notice, information or material delivered or furnished to the name and address of a Member as last shown on the books of the Association shall be deemed to be the proper delivery or furnishing of such notice, information or material. If notice of a meeting is given as provided for above, nonreceipt of actual notice by any Member shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any member may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to him. The presence of any Member at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

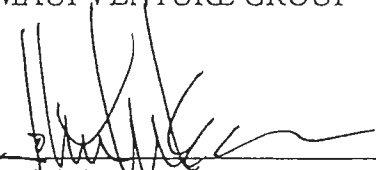
Notices, information and material required to be given hereunder to Declarant shall be addressed to the Declarant at P. O. Box 220, Kihei, Maui, Hawaii 96753, or at such other address that Declarant shall provide to the Association from time to time. Notices, information and material required to be given hereunder to the Association or the Board shall be addressed to such entity in care of the Association at the office of the Association.

12.18 Word Usage. The use of the masculine gender herein shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the text so requires.

IN WITNESS WHEREOF, Declarant has executed these CC&R's as of the date and year first above written.

WEST MAUI VENTURE GROUP

By



JOHN M. KEAN
Its General Partner

By



J. STEPHEN GOODFELLOW
Its General Partner

STATE OF HAWAII

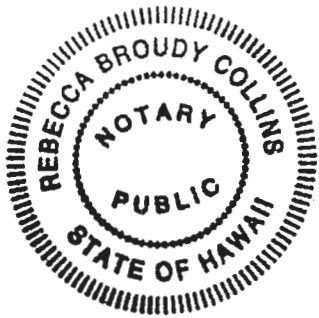
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) ss.

COUNTY OF MAUI

)

On this 10th day of December, 1999, before me personally appeared JOHN M. KEAN, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the General Partner of WEST MAUI VENTURE GROUP, a Hawaii limited partnership, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Rebecca Broudy Collins

Type/Stamp
Name: REBECCA BROUDY COLLINS

Notary Public
State of Hawaii

My commission expires: 10.14.01

STATE OF HAWAII

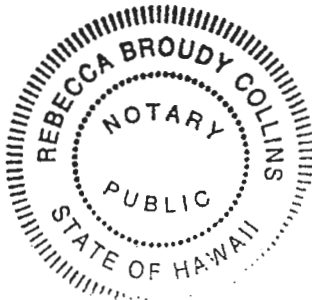
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) ss.

COUNTY OF MAUI

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On this 13th day of December, 1999, before me personally appeared J. STEPHEN GOODFELLOW, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the General Partner of WEST MAUI VENTURE GROUP, a Hawaii limited partnership, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Rebecca Broudy Collins

Type/Stamp

Name: REBECCA BROUDY COLLINS

Notary Public

State of Hawaii

My commission expires:

10.14.01

EXHIBIT "A"

PARCEL 5-8

KAHOMA STREAM FLOOD CONTROL PROJECT

SITUATED AT MOALII, LAHAINA, MAUI, HAWAII
BEING ALL OF ROYAL PATENT 5676, LAND COMMISSION AWARD 11227,
APANA 4 TO NALIMU AND ROYAL PATENT 3453,
LAND COMMISSION AWARD 6760-B, APANA 6 TO HANAIEI AND
PORTIONS OF GRANT 1891, APANAS 4, 7 & 8 TO D. BALDWIN;
ROYAL PATENT 5579, LAND COMMISSION AWARD 2320,
APANA 2 TO MOAKAKA FOR MERE; ROYAL PATENT 1182,
LAND COMMISSION AWARD 6073, APANA 1 TO HALEPAKA AND ANI;
ROYAL PATENT 3453, LAND COMMISSION AWARD 6760-B,
APANA 5 TO HANAIEI; ROYAL PATENT 5666,
LAND COMMISSION AWARD 4760, APANA 1 TO LELEHU;
ROYAL PATENT 1839, LAND COMMISSION AWARD 3702,
APANA 2 TO D. MALO; ROYAL PATENT 1180,
LAND COMMISSION AWARD 312, APANA 1 TO T. KEAWEIWI;
ROYAL PATENT 1726, LAND COMMISSION AWARD 6849,
APANA 1 TO NAHALE; ROYAL PATENT 5676,
LAND COMMISSION AWARD 11227, APANA 5 TO NALIMU AND
ROYAL PATENT 1860, LAND COMMISSION AWARD 6061
APANA 4 TO HANEMO

Beginning at the Southwest corner of this Parcel, on the North side of Kahoma Stream Right-of-Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 4,521.84 feet South and 3,749.47 feet West and running by azimuths measured clockwise from True South:

1. 181' 44' 132.58 feet along Parcel 1-A, Kahoma Stream Flood Control Project;
2. Thence, along Parcel 1-A, Kahoma Stream Flood Control Project on a curve to the left with a radius of 722.34 feet, the chord azimuth and distance being:
165' 05' 30" 413.73 feet;
3. 148' 27' 103.58 feet along Parcel 1-A, Kahoma Stream Flood Control Project;
4. 224' 44' 454.86 feet along Parcel 1-A, Kahoma Stream Flood Control Project;
5. 274' 40' 1,426.00 feet along the Government (Crown) Land of Wahikuli;
6. 342' 15' 380.10 feet along the Government (Crown) Land of Wahikuli;
7. 300' 10' 255.00 feet along the Government (Crown) Land of Wahikuli;
8. 321' 20' 32.65 feet along the Government (Crown) Land of Wahikuli;
9. 52' 18' 96.13 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
10. 59' 18' 288.99 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
11. 65' 49' 192.66 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
12. 72' 23' 286.61 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
13. 77' 12' 195.52 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
14. 82' 34' 193.06 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
15. 89' 15' 193.56 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
16. 94' 27' 30" 193.56 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;
17. 99' 40' 193.56 feet along Right-of-Way Parcel 7, Kahoma Stream Flood Control Project;