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COMMUNITY COVENANT FOR WARD VILLAGE

PARTIES TO DOCUMENT:

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1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814

COMMUNITY COVENANT

FOR

WARD VILLAGE

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COMMUNITY COVENANT FOR WARD VILLAGE

"**Ward Village**" is an urban, mixed-use development located in the City and County of Honolulu, Hawaii. This Community Covenant for Ward Village (as may be amended and supplemented from time to time, the "**Community Covenant**") establishes a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, and maintenance of Ward Village. Victoria Ward, Limited, a Delaware corporation, is the master developer of Ward Village and, along with its successors and assigns, is referred to as the "**Declarant**."

The Ward Village Owners Association (the "**Owners Association**"), has been or shall be incorporated as a Hawaii nonprofit corporation to own, operate, and/or maintain various common areas and improvements within Ward Village and to administer and enforce the Governing Documents, including this Community Covenant, pertaining to the development.

DECLARATION OF COVENANT

By executing and recording this Community Covenant, Declarant declares that the property described on Exhibit "A," and any additional property made subject to this Community Covenant in the future by amendment or supplement, shall constitute "**Ward Village**" or the "**Community**," as referred to in this Community Covenant. The covenants, conditions, restrictions, and easements set forth in this Community Covenant constitute equitable servitudes and this Community Covenant shall run with the title to all portions of Ward Village, shall govern the development and use of such property, and shall be binding upon and benefit Declarant and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property, and their respective heirs, successors, successors-in-title, and assigns. This Community Covenant shall also be binding upon and benefit the Owners Association, its successors and assigns.

This document does not and is not intended to create a condominium under Hawaii law.

PART ONE: INTRODUCTION TO THE COMMUNITY

Chapter 1 Governing Documents

Ward Village shall be guided and governed by certain governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

Community Covenant: (recorded)	this Community Covenant for Ward Village, which creates obligations that are binding upon the Owners Association and all present and future owners of property in Ward Village
Supplement: (recorded)	a recorded Supplement to this Community Covenant (which may take any form or be denominated in any manner (e.g., a recorded supplement, plat, deed restriction, easement, etc.)), which may submit a portion of the Additional Property (as defined in Section 2.1) to this Community Covenant, create easements, impose additional obligations or restrictions, designate Area of Common Responsibility, Service Areas, or Election Districts, or any of the foregoing
Plat (recorded)	any subdivision plat, survey, or condominium instrument recorded from time to time affecting Ward Village which, among other things, may describe Parcels, Common Areas, Limited Benefit Areas, Area of Common Responsibility, streets, utility and other easements, and other aspects of Ward Village
By-Laws: (attached and recorded with this Community Covenant as Exhibit "E")	the By-Laws of Ward Village Owners Association, adopted by its Board of Directors, which govern the Owners Association's internal affairs, such as voting, elections, meetings, etc.
Articles of Incorporation: (filed with the State of Hawaii Department of Commerce and Consumer Affairs)	the Articles of Incorporation of Ward Village Owners Association, which establishes the Owners Association as a nonprofit corporation under Hawaii law
Design Guidelines: (Declarant adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, which govern new construction and modifications, including structures, landscaping, and other improvements on a Parcel (as defined in Section 3.1)
Rules: (initial set attached and recorded within this Community Covenant as Exhibit "C")	the rules of the Owners Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Ward Village
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Owners Association activities and to regulate the operation and use of property which the Owners Association owns, maintains, or controls

Table 1.1 Governing Documents

1.1. Scope and Applicability

Ward Village is administered through various documents that have a legal and binding effect on all owners and occupants of property subject to this Community Covenant, as well as on anyone else that now or in the future has an interest in any portion of the property comprising the Community. Such documents, referred to in this Community Covenant as the "**Governing Documents**," include the documents described in Table 1.1, each as may be amended and/or supplemented from time to time. All Parcel Owners and Sub-Unit Owners (each as defined in Section 2.4), as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

1.2. Additional Covenants

The owner of any property within Ward Village may impose covenants on its property, in addition to the Governing Documents, with Declarant's approval as required pursuant to Section 18.6. As between this Community Covenant and any such additional covenants, the more restrictive provisions control. If given such authority in the instrument setting forth such covenants, the Owners Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts

If there are conflicts between any of the Governing Documents and Hawaii law, Hawaii law shall control. If there are conflicts between the Governing Documents and any covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants) previous to the recording of this Community Covenant, the previously recorded covenants shall control unless specifically made subordinate to the Governing Documents. If there are conflicts between or among any of the Governing Documents, then this Community Covenant, the Articles, and the By-Laws (in that order) shall control. If there are conflicts between the Governing Documents and any additional covenants recorded on any property within Ward Village (or the rules or policies adopted pursuant to any such additional covenants) following the recording of this Community Covenant, the Governing Documents shall control.

The Governing Documents use italicized summaries at the beginning of each Chapter. In addition, diagrams and tables are used to illustrate concepts and assist the reader. **In the event of a conflict between any italicized summary, diagram, or table and the text of the Governing Documents, the text shall control.**

If any court determines that any provision of this Community Covenant is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

The defined terms used in this Community Covenant have the meaning described in the paragraph where they first appear in bold print. An index to defined terms follows the Table of Contents. All other terms used in this Community Covenant have their natural, commonly accepted definitions.

1.5. Interpretation of Certain References

The following references used in any of the Governing Documents shall be generally interpreted as described below unless otherwise provided in the particular Governing Document:

Village Standard. Where the Governing Documents require compliance with the "**Village Standard**," the standard to be applied is the higher of: (a) the standard of use and operations, conduct, maintenance, and appearance generally prevailing in Ward Village, or (b) the minimum standards described in the Master Plan, this Community Covenant, the Design Guidelines, the Rules, and Board resolutions. The Village Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). All aspects of the Village Standard need not be set out in writing as elements comprising the standard may require the exercise of subjective judgment and cannot be reduced to written criteria. Declarant initially shall establish the Village Standard and the Village Standard may evolve as development progresses and as Ward Village matures.

Maintenance. All references in this Community Covenant to "**maintenance**" shall refer to maintenance, repair, and, except as otherwise specifically conditioned in this Community Covenant, replacement.

Majority. All references in the Governing Documents to a "**majority**" shall refer to means those votes, Parcel Owners, Sub-Unit Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Person. References in the Governing Documents to a "**Person**" or "**Persons**" shall mean an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "**recorded**" legal instrument, or to "**recording**" or the "**recording**" of a legal instrument, shall mean an instrument recorded or the recording of a legal instrument in the official records of the Bureau of Conveyances of the State of Hawaii, or such other place designated as the official location for recording or filing documents affecting title to real estate in order to make them a matter of public record.

Notice. All references in this Community Covenant to "**notice**" or "**notify**" or any derivative of such terms shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or, with written confirmation of transmission, by facsimile or electronic mail.

Notices shall be deemed to have been duly given and effective:

(a) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or by written confirmation from the deliverer that delivery was accepted; or

(c) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

Chapter 2

Community Administration

Declarant, the Owners Association, and the Parcel Owners all have a role in the functioning of Ward Village and in helping to fulfill the vision and goals for Ward Village. This Chapter identifies those parties and describes their roles in administering the Community.

2.1. Declarant

Declarant, as the developer of Ward Village, has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the development and operation of Ward Village.

Declarant's proposed plan for development of Ward Village is described in the various land use plan(s), permits, and other applications and approvals for Ward Village approved by the City and County of Honolulu and the Hawaii Community Development Authority ("HCDA"), as may be supplemented and amended from time to time, which encompass the property described in Exhibit "A" and all or any portion of the property described in Exhibit "B" (collectively, the "**Master Plan**"). However, Declarant is not obligated to submit property shown on the Master Plan to this Community Covenant. In addition, Declarant may submit property to this Community Covenant that is not shown on the Master Plan.

Declarant has reserved various rights for itself in the Governing Documents with respect to development and administration of Ward Village, including the right to submit additional property to this Community Covenant, the right to appoint a majority of the members of the Owners Association's board of directors ("**Board**"), and those rights set forth in Chapters 17 and 18. Unless otherwise specified, Declarant may exercise its reserved rights during the "**Development and Sale Period**."

The Development and Sale Period shall continue until the later of (i) such time as all Parcels planned for development or redevelopment as part of Ward Village have been so developed pursuant to the Master Plan and are improved with structures for which all necessary approvals constituting a condition for occupying such structures (e.g., a certificate of occupancy issued by the City and/or County of Honolulu and any similar instrument which may be issued by HCDA) have been issued; (ii) such time as Declarant or any "Declarant Affiliate" (defined below) no longer owns real property in Ward Village; or (iii) the expiration of Declarant's option to expand the Community pursuant to Chapter 17; provided, in no event shall the Development and Sale Period expire prior to the expiration or termination of the Declarant Control Period (defined below). Notwithstanding the above, Declarant, in a recorded instrument, may terminate any or all of its rights prior to the termination of the Development and Sale Period.

A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with Declarant, and any Person that is owned by, or is an owner, a member, a partner, a joint venture partner, or a shareholder of, Declarant.

During the "**Declarant Control Period**," Declarant is entitled to appoint a majority of the members of the Owners Association's board of directors ("**Board**"). The Declarant Control Period begins on the date of the Owners Association's incorporation and terminates upon the first of the following to occur:

(a) when 100% of the total number of Parcels permitted by applicable zoning for the property described in the Master Plan have been conveyed to or are owned by Persons other than Declarant, a Declarant Affiliate, or a Parcel Developer;

(b) December 31, 2045; or

(c) when, in its discretion, Declarant so determines and declares in a recorded instrument.

A "**Parcel Developer**" is any Person who purchases a Parcel for development and resale in the ordinary course of its business. For purposes of determining the Declarant Control Period, a Parcel Developer shall be deemed to hold title to a Parcel for so long as it continues to own any portion of the Parcel, including any Sub-Unit, for purposes of development, construction, and/or resale.

Declarant may assign its status as Declarant under the Governing Documents, any Declarant rights, and any obligations of Declarant to any Person who takes title to any portion of Ward Village or any property described in Exhibit "B" attached hereto (the "**Additional Property**") or otherwise assumes development rights and obligations with respect to Ward Village. Such assignment shall be made only in a recorded instrument signed by both the assigning Declarant and the assignee.

2.2. The Owners Association

The Owners Association is the entity primarily responsible for managing and administering Ward Village in accordance with the Governing Documents. The Owners Association may exercise all rights and powers which the Governing Documents and Hawaii law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.3. The Board

The Board is responsible for administration, management, and operation of the Owners Association. The Board is selected as provided in the By-Laws. Unless the Governing Documents or Hawaii law specifically provide otherwise, the Board may exercise the Owners Association's rights and powers without a vote of the membership.

In exercising the Owners Association's rights and powers, making decisions on the Owners Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Owners Association's affairs, Board members and the Owners Association's officers may exercise discretion to the fullest extent permitted under Hawaii law subject to the standards of conduct set forth in the By-Laws.

The Board may institute, defend, settle, or intervene on behalf of the Owners Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, as defined in Section 3.1, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Owners Association or its members.

2.4. The Parcel Owners

Except as provided below with respect to Sub-Units and Parcel Associations, each Person that holds record title to a Parcel is referred to in the Governing Documents as a "**Parcel Owner**." However, any Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered a "Parcel Owner." In addition, if a Parcel is subject to a long-term ground lease as of the date such Parcel is made subject to this Community Covenant, and if so provided in the Supplement submitting the Parcel to this Community Covenant, the ground lessee (rather than the holder of fee simple title) will be considered the Parcel Owner. If a Parcel has more than one Parcel Owner, each co-Owner is jointly and severally obligated to perform the responsibilities of the Parcel Owner under the Governing Documents.

Every Parcel Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Community Covenant.

One or more Parcels within Ward Village may include condominium units or subdivided lots (as defined in Section 3.1, "Sub-Units") for which a separate condominium or other owners association is formed to administer additional covenants applicable to that particular development ("**Parcel Covenants**"). Any such condominium or other owners association is referred to in this Community Covenant as a "**Parcel Association**;" provided, in the case of a Parcel which is governed by a master condominium or other master owners association containing one or more subordinate sub-associations, the master condominium or master owners association for the Parcel, and not the sub-association(s), shall be the Parcel Association with respect to such Parcel.

Unless otherwise provided in the Governing Documents, if a Parcel Association is formed for a Parcel, the Parcel Association (i) shall act on behalf of the owners of Sub-Units ("**Sub-Unit Owners**") within the Parcel, (ii) shall be deemed the Parcel Owner for such Parcel for all purposes under this Community Covenant, and (iii) shall be the member of the Owners Association with respect to such Parcel. Sub-Unit Owners shall *not* be Parcel Owners under this Community Covenant and are *not* members of the Owners Association.

References to Owners in the Governing Documents shall be deemed to refer to Parcel Owners and/or Sub-Unit Owners (or Sub-Unit Owners entitled to vote or obligated directly for payment of assessments), as applicable.

2.5. Mortgagees; Ground Lessors

If a Parcel is made subject to a mortgage or other form of security instrument affecting title to a Parcel ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of Ward Village. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

Certain Parcels may be subject to long term ground leases in addition to being subject to this Community Covenant. For purposes of this Community Covenant, a ground lessor under a long-term ground lease in existence and recorded prior to the date this Community Covenant is recorded against the ground leased property (and the ground lessee of which is deemed a Parcel Owner under this Community Covenant) shall have the same rights, protections, responsibilities, and obligations as do Mortgagees and any reference to first Mortgagees in this Community Covenant shall be deemed to include such ground lessors; provided, as applied to such ground lessors, a reference to foreclosure or deed in lieu of foreclosure by a first Mortgagee shall be deemed to refer to eviction, dispossession proceedings, or other actions taken under a ground lease by a ground lessor to remove a ground lessee from possession of all or a portion of a Parcel.

Notwithstanding anything to the contrary herein, a ground lease shall not be deemed part of the Governing Documents, but shall be an independent instrument, and any amendment, modification, or termination of a ground lease shall be governed by the terms of the ground lease and not the provisions of this Community Covenant.

2.6. Estoppels

Within 30 days after the written request of any Parcel Owner or Sub-Unit Owner, the Owners Association shall issue for the benefit of such Owner or its actual or prospective transferee or Mortgagee, an estoppel certificate representing (a) the status of such Owner and its Parcel or Sub-Unit with respect to payment of assessments and compliance with the Governing Documents; (b) the status of the Owners Association, including its current and planned budgets, financial statements, and current and intended assessment schedule, and the existence and nature of any litigation involving the Owners Association; and (c) such other reasonably requested information customarily provided by owners associations in Hawaii.

Chapter 3 Community Structure and Organization

Ward Village consists of Parcels intended for operation and control by individual Parcel Owners, as well as property that the Owners Association operates and controls and that is intended for common use by all Parcel Owners and the members of the general public. Parcels may be assigned to Service Areas to permit the Owners Association to provide special services and benefits to particular Parcels within the Community.

3.1. Property Designations Within Ward Village

Parcels. Except as provided below, a "**Parcel**" is a portion of Ward Village, whether improved or unimproved, which may be independently owned and conveyed and is intended for development, use, and occupancy in a manner consistent with the Master Plan; provided, Common Area and property dedicated for public use shall not be Parcels. A Parcel shall include the land or air space that is part of the Parcel as well as any improvements thereon. Without limitation, a Parcel may be comprised of contiguous or non-contiguous real property, including airspace.

With respect to any portion of Ward Village that is governed by a Parcel Association, the term Parcel refers collectively to all lots and units (*i.e.*, independently conveyable parcels or lots or condominium units ("**Sub-Units**")) and any common area or common elements subject to such Parcel Association.

Parcels are subject to further subdivision, including the creation of Sub-Units within a Parcel, subject to this Community Covenant and Hawaii law.

Area of Common Responsibility. The phrase "**Area of Common Responsibility**" refers, collectively, to any properties and facilities for which the Owners Association has maintenance or other responsibility under the Governing Documents, or for which the Owners Association otherwise agrees to assume responsibility, regardless of ownership. The Area of Common Responsibility includes property that the Owners Association owns or otherwise holds possessory or use rights in, and also includes portions of Parcels, public open space and parks, and property dedicated to the public, such as public rights-of-way. The Area of Common Responsibility, and the process by which Area of Common Responsibility is identified, is described further in Section 10.2.

Common Area. The "**Common Area**" includes those portions of the Area of Common Responsibility, if any, that the Owners Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Parcel. The Common Area also includes any property that the Owners Association holds under a lease.

Limited Benefit Area. Any portion of the Area of Common Responsibility may be designated as "**Limited Benefit Area**" and assigned for the exclusive use or primary benefit of less than all Parcels or Sub-Units. Limited Benefit Areas might include such things as entry features, parking areas, recreational or social facilities, and components of infrastructure or utility systems designed to serve only particular Parcels, among other things.

Declarant may designate property as Limited Benefit Area and assign it to particular Parcels on the recorded Plat or plans depicting such property, in a deed conveying such property to the Owners Association or a Parcel Owner, or in a Supplement. At any time during the Development and Sale Period, Declarant may assign use of the same Limited Benefit Area to additional Parcels.

3.2. Service Areas

Parcels or Sub-Units may also be part of one or more "**Service Areas**" which share Limited Benefit Areas and/or receive benefits or services from the Owners Association that the Owners Association does not provide to all Parcels or Sub-Units within Ward Village. For example, and without limitation, a Service Area may be created for:

- similarly situated Parcels or Sub-Units which receive maintenance services that are not provided to other Parcels, Sub-Units, or uses;
- particular Parcels or Sub-Units that share the use of a common recreational or social amenity or facility (*e.g.*, an amenity or facility created for the use and enjoyment of residential properties within Ward Village);
- particular Parcels or Sub-Units that share the use of parking facilities which are not available to all Parcel Owners, Sub-Unit Owners, or occupants; and/or
- uses which receive or benefit from services the Owners Association provides that do not similarly benefit other uses.

A Parcel or Sub-Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Parcels or Sub-Units that are not contiguous.

Declarant may designate Service Areas (by name or other identifying designation) and assign Parcels or Sub-Units to a particular Service Area in a Supplement, which Declarant may record and impose upon a Parcel without the consent of the Parcel Owner. During the Development and Sale Period, Declarant may unilaterally amend this Community Covenant or any Supplement to change Service Area boundaries, subject to existing service contracts between the Owners Association and service vendors, and subject to the consent of the owner(s) of any property being added to or removed from the Service Area by such amendment.

In addition, the Board may, by resolution, designate Service Areas and assign Parcels and/or Sub-Units to Service Areas upon petition of the Parcel Owners and/or Sub-Unit Owners affected by the proposed designation pursuant to Section 11.2.

The Parcel Owners of Parcels and the Sub-Unit Owners of Sub-Units within each Service Area may elect a "**Service Area Committee**" in accordance with the By-Laws to represent and act on behalf of the Service Area with respect to the services and benefits that the Owners Association provides to the Service Area; provided, for so long as Declarant or any Declarant Affiliate is the Owner of a Parcel or Sub-Unit within a Service Area, Declarant may appoint the members of the Service Area Committee.

3.3. Election Districts

Declarant, during the Declarant Control Period, or the Board, following termination of the Declarant Control Period, may designate "**Election Districts**" for the purpose of electing directors to the Board. The By-Laws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

Chapter 4

Association Membership and Voting Rights

The Owners Association is the entity through which each Parcel Owner participates in the governance and administration of Ward Village. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, and without limiting the Board's authority, the Parcel Owners have vested membership and voting rights which allow their participation in the administration of the Community.

4.1. Membership

The Owners Association initially has two classes of membership: the Parcel Owner membership, which is comprised of all Parcel Owners, and Declarant membership, which consists solely of Declarant and any Declarant Affiliate that owns a Parcel. All Persons holding a membership in the Owners Association are referred to in this Community Covenant as "**Members.**"

(a) **Parcel Owner Membership.** Every Parcel Owner is automatically a Member of the Owners Association. However, there shall be only one Parcel Owner membership per Parcel. Thus, if a Parcel has more than one Parcel Owner, all co-Owners of the Parcel share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Community Covenant and in the By-Laws.

If a Parcel Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or other individual the Parcel Owner designates from time to time in a writing to the Owners Association's Secretary, except that only the individuals residing in the Parcel shall be entitled to use any Area of Common Responsibility facilities available for the exclusive use of Parcel Owners.

Notwithstanding the above, all co-Owners of a Parcel are jointly and severally obligated to perform the responsibilities of a Member.

(b) **Declarant Membership.** Declarant and any Declarant Affiliate holding title to a Parcel shall be Declarant members. Declarant membership shall terminate two years after expiration of the Declarant Control Period or on such earlier date as Declarant determines and declares in a recorded instrument. After termination of Declarant membership, Declarant and any Declarant Affiliate owning a Parcel shall be Parcel Owner Members for all purposes with respect to each Parcel they own.

Unless Declarant specifically delegates such authority, Declarant shall act as Declarant Member and on behalf of the Declarant membership on all matters.

(c) **Additional Membership Classes.** Declarant may, by Supplement, create additional classes of membership comprised of the owners of Parcels within any portion of the additional property submitted to this Community Covenant. Declarant shall specify in any such Supplement the rights, privileges, and obligations of the Members of any class of membership created by that Supplement.

4.2. Voting

(a) **Equivalent Units.** Each Parcel and each Sub-Unit shall be allocated the number of votes corresponding to the number of "**Equivalent Units**" assigned in accordance with the formula set forth in Exhibit "D," subject to any limitations on voting set forth in this Community Covenant and the other Governing Documents. Votes allocated to residential uses (*i.e.*, multi-family rental apartments and for-sale residential units (including all single family attached, detached, and condominium units which may be individually conveyed)) are referred to in the Governing Documents as "**Residential Votes**." Votes allocated to non-residential uses (*i.e.*, retail, general office, etc.) are referred to in the Governing Documents as "**Non-Residential Votes**."

(b) **Exercise of Voting Rights.** Parcel and Sub-Unit Owners may exercise voting rights as set forth in this Community Covenant and the By-Laws.

Subject to Section 4.2(c) and governing documents of any Parcel Association having jurisdiction over the Parcel (which shall control over this paragraph), if more than one Person is the Parcel or Sub-Unit Owner, the vote for such Parcel or Sub-Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Parcel or Sub-Unit determine among themselves. Any co-Owner may cast the vote for the Parcel or Sub-Unit, and majority agreement shall be conclusively presumed unless another co-Owner of

the Parcel or Sub-Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Parcel's or the Sub-Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently and inconsistently.

No vote shall be exercised for any Parcel or Sub-Unit exempt from assessment under Section 13.9. Further, in addition to Declarant's voting rights with respect to Parcels that Declarant or any Declarant Affiliate owns, Declarant's consent shall be required for actions of the Board, the membership, and committees, as specifically provided in the Governing Documents.

(c) *Parcels Containing Sub-Units.* With respect to any Parcel containing Sub-Units, if all of the Sub-Units within the Parcel have the same Land Use Classification under Exhibit "D" (*e.g.*, Sub-Units within a residential condominium), then the votes for such Sub-Units shall be exercised by the board of directors of the Parcel Association for the Parcel in accordance with the Parcel Association's governing documents or, in the absence of provisions addressing the same, as the Parcel Association's board of directors determines.

Except as otherwise provided in this Community Covenant, if different Sub-Units within the Parcel have different Land Use Classifications (*e.g.*, a Parcel may contain residential Sub-Units and retail Sub-Units), on any matter calling for a vote, the board of directors of the Parcel Association shall cast votes as a block for the Sub-Unit Owners of each Land Use Classification within its Parcel (*e.g.*, votes will be cast separately for residential Sub-Units and for retail Sub-Units within a mixed-use condominium). Such block vote shall be cast in accordance with the Parcel Association's governing documents (which may require that directors representing particular uses in the Parcel Association be permitted to cast the votes on behalf of such uses) or, in the absence of provisions addressing the same, the board of directors of the Parcel Association shall poll the Sub-Unit Owners of each Land Use Classification within its Parcel and cast the votes for such Sub-Units in accordance with the direction of the majority of the poll respondents.

(d) *Votes Concerning Limited Benefit Areas.* When a vote is called for concerning the assignment, use, repair, reconstruction, or continued operation of Limited Benefit Area, if the Limited Benefit Area is assigned to less than all of the Sub-Units within a Parcel, then the vote for such Parcel shall be cast by the Owners of the Sub-Units within the Parcel to which the Limited Benefit Area is assigned and *not* by the Parcel Owner. In such case, the votes shall be tallied individually for each Sub-Unit and not as a block vote for the Parcel.

PART TWO: COMMUNITY STANDARDS

Chapter 5

Architecture, Landscaping, and Aesthetic Standards

All Parcel Owners are required to uphold minimum design, landscaping, and general appearance standards with respect to their Parcels. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Parcels.

5.1. General

(a) **Improvements; Approval Required.** All site work, structures, improvements, landscaping, signage, lighting, and other items placed on any portion of a Parcel in a manner or location visible from outside of any structure (collectively, "**Improvements**"), including repairs and replacements, are subject to standards for design, landscaping, and aesthetics set forth in or adopted pursuant to this Chapter, including standards set forth in the Design Guidelines for Ward Village ("**Design Guidelines**"), and the approval procedures set forth in this Chapter.

No approval is necessary to rebuild or restore damaged structures in a manner consistent with the plans and specifications most recently approved for such structures or to do work that does not cause material change to the exterior appearance of the structure. Generally, no approval is required for work done to the interior of any structure; however, interior modifications that materially change the exterior appearance of the structure do require prior approval.

(b) **Application to Commercial Uses.** Each Parcel Owner acknowledges and understands there will be multiple commercial uses within the Ward Village that will result in on-going visible changes to the exterior of structures and to the signage, lighting, window displays, and storefronts associated with such uses. It is not the intent of this Chapter to prohibit or unduly regulate or burden the process of effectuating such changes or to require a particular appearance. Rather, the purpose of this Chapter, as applied to commercial uses, is to ensure that such changes are compatible with the Village Standard and the Design Guidelines. The approval or disapproval of any Improvements solely for the purpose of accommodating permitted commercial uses shall be based solely upon such considerations.

(c) **Governmental Approvals.** Approval under this Chapter is not a substitute for any approvals or reviews required by the City and County of Honolulu, HCDA, or any other governmental agency or entity having jurisdiction over architectural or construction matters. Approval is required under this Chapter prior to seeking governmental approval for the construction, reconstruction, or renovation of Improvements on a Parcel or for governmental approval of a variance from applicable zoning or other design or construction requirements relating to a Parcel.

(d) **Application to Declarant.** This Chapter shall not apply to Declarant's, Declarant Affiliate's, or the Owners Association's design and construction activities during the Declarant Control Period.

5.2. Design Review Authority



Initially, Declarant reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board will appoint an Architectural Review Committee to review applications for proposed improvements. Declarant or the Architectural Review Committee is referred to as the "Reviewer."

(a) **Declarant.** Declarant shall have exclusive authority to review and act upon all applications for design review of proposed Improvements until the expiration of the Development and Sale Period. In reviewing and acting upon any request for design approval, Declarant acts solely in Declarant's interest and owes no duty to any other Person.

From time to time, Declarant may delegate any or all of its rights under this Chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to: (i) Declarant's right to revoke such delegation at any time and reassume its prior control; and (ii) Declarant's right to veto any decision which it determines, solely in its discretion, to be inappropriate or inadvisable. So long as Declarant has any rights under this Chapter, the jurisdiction of others shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon Declarant's delegation of authority to the Owners Association or upon expiration or termination of Declarant's rights under Section 5.2(a), the Board shall appoint an Architectural Review Committee ("**Architectural Review Committee**" or "**ARC**") to assume jurisdiction over matters within the scope of the delegated authority or this Chapter, respectively. In addition, the Board may appoint or provide for the appointment of a community architect or other appropriate design professional to assist or otherwise work with the ARC in a manner determined by the Board.

The ARC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. ARC members need not be Parcel Owners or representatives of Parcel Owners. The ARC may, but need not, include architects, engineers, or similar professionals. The Owners Association may compensate ARC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of Declarant's rights under this Chapter, the ARC shall notify Declarant in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have 20 business days after receipt of such notice to veto any such action, solely in its discretion, by written notice to the ARC.

Unless Declarant delegates all or a portion of its reserved rights to the ARC or until Declarant's rights under this Chapter terminate, the Owners Association shall have no jurisdiction over the review and approval of requests for approval of architectural matters under this Chapter. However, the Owners Association may enforce the provisions of this Chapter and the Design Guidelines.

(c) Reviewer. For purposes of this Chapter, the entity having jurisdiction in a particular case (whether Declarant or the ARC) shall be referred to as the "**Reviewer**."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Owners Association's annual operating budget.

(e) Construction Deposit. As a condition of approval of any application hereunder, the Reviewer may require a Parcel Owner to post a construction deposit. The Owners Association shall be entitled to draw upon the construction deposit to cover costs which it incurs to:

(i) clean up dirt or debris and/or repair damage to Common Areas, or any portions of Ward Village, which the Board determines, after notice to the Parcel Owner, is attributable to the construction activities of the Parcel Owner or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the Parcel Owner's Parcel; and

(ii) complete any improvements to the Parcel, or correct or cure any conditions on the Parcel, which the Reviewer determines necessary to conform the Parcel to the plans approved pursuant to Section 5.3(b) or to correct drainage or other conditions on the Parcel which fail to meet the Village Standard or which cause or are likely to cause damage to property outside the Parcel, if the Parcel Owner fails to do so within a reasonable period of time as set forth in written notice from the Owners Association specifying the action required.

The Parcel Owner shall provide funds to restore the construction deposit to its original amount within 10 days after written request from the Board notifying the Parcel Owner of the amount of any disbursement from the Parcel Owner's construction deposit. Upon final inspection and approval of the completed construction, the Owners Association shall refund to the Parcel Owner or applicant who originally paid the construction deposit the amount of such construction deposit, less any funds expended by the Owners Association pursuant to this subsection (e) and not restored by the applicant.

5.3. Guidelines and Procedures



The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred or required and others that are discouraged or prohibited. The Design Guidelines also set forth procedures for submitting applications for proposed Improvements and may describe how to carry out the construction of the Improvements once approval has been received.

(a) Design Guidelines. Declarant may prepare initial Design Guidelines, which may contain general provisions applicable to all of Ward Village as well as specific provisions that vary among uses, locations within the Community, or other factors. The Design Guidelines are intended to provide guidance to Parcel Owners and architects regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. The failure to prepare Design Guidelines shall not obviate the review and approval requirements set forth in this Chapter.

Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines.

Amendments to the Design Guidelines shall apply prospectively only. Amendments shall not require modifications to or removal of any structures previously approved. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Parcel Owners upon request.

(b) Procedures. Unless the Design Guidelines provides otherwise, no construction of any Improvement may begin on any Parcel until the design of such Improvement is approved by the Reviewer. A writ-

ten application for design approval may be required and, in such case, must be accompanied by plans and specifications, which shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations without regard to cost. Each Parcel Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements or any portion of any Improvement.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to the dispute resolution procedures set forth in Chapter 19 or judicial review so long as they are made in good faith and in accordance with procedures required or authorized under this Chapter or the Design Guidelines.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information and within such time period as may be set forth in the Design Guidelines. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

If the Reviewer fails to respond within the time period specified in the Design Guidelines, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Parcel Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

The Reviewer may exempt certain activities from the application and approval requirements of this Chapter if such activities are undertaken in compliance with the Design Guidelines and the Village Standard.

(c) Appeals Process. After Declarant no longer has review authority under Section 5.2(a) and following the Board's appointment of the ARC, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Owners Association's Secretary, within such time period as may be set forth in the Design Guidelines, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval.

The Board may: (i) affirm the ARC's decision; (ii) affirm a portion and overturn a portion of the ARC's decision; or (iii) overturn the ARC's entire decision. The Board shall notify the applicant and the ARC in writing of its decision after its receipt of the request for appeal with all required information and within such time period as may be set forth in the Design Guidelines. The Board's decision shall include a description of its reasons for overturning the ARC's decision. During the appeal process the Parcel Owner shall not commence any work requiring approval hereunder.

5.4. No Waiver of Future Approvals

The people reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. While the Reviewer may permit Improvements constructed in conformance with plans it previously has approved to remain in place, it may refuse to approve similar proposals from the same or different Parcel Owners in the future. Approval of applications or plans shall *not* constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

The Reviewer may authorize variances from compliance with the Design Guidelines when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall: (a) be effective unless in writing; (b) be contrary to this Community Covenant; or (c) prevent the Reviewer from denying a variance in other circumstances.



When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Parcel Owner may file a request for a variance with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

5.6. Limitation of Liability

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Ward Village. Review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations. **The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Parcel Owners.**

Declarant, Declarant Affiliates, the Owners Association, its officers, the Board, any committee, and any member of any of the foregoing shall not be liable for and assume no responsibility for, and Parcel Owners specifically waive all claims relating to: (a) soil conditions, drainage, or other general site work; (b) defects in plans revised or approved hereunder or for the accuracy or completion of construction in accordance with such plans; (c) loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; (d) injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on, or modifications to, any Parcel, including, without limitation, injury, damage, or loss relating to the structural integrity or soundness of approved construction or modifications; or (e) loss or damage relating to the economic viability of any business or enterprise operated on a Parcel.

In all matters relating to actions taken pursuant to this Chapter, the Owners Association shall defend and indemnify the Board, the ARC, and the members of each, as provided in the By-Laws.

5.7. Certificate of Compliance

Any Parcel Owner may request in writing that the Owners Association issue a certificate of compliance certifying that there are no known violations of this Chapter or the Design Guidelines. The Owners Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. The denial of a request for a certificate of compliance shall include a list of known and alleged violations as of the date of the request. Issuance of such a certificate shall prevent the Owners Association from taking enforcement action against a Parcel Owner for any condition known to the Owners Association on the date of such certificate.

Chapter 6 Maintenance, Repair, and Replacement

This Chapter describes the Parcel Owners' responsibilities for maintenance and repair of their Parcels and for insuring their Parcels against property damage.

6.1. Maintenance by Parcel Owners

Each Parcel Owner shall maintain its entire Parcel, including all structures, landscaping, and other Improvements comprising the Parcel, in a safe, clean, neat, and attractive manner, in good condition and repair, free of trash and debris, and consistent with the Governing Documents and the Village Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Owners Association pursuant to this Community Covenant, any Supplement, or by law.

In addition, a Supplement may provide that a Parcel Owner is obligated to maintain designated portions of its Parcel in a prescribed manner for the benefit of all or portions of Ward Village (e.g., community signage).

6.2. Maintenance by the Owners Association

As further described in Section 10.2, the Owners Association shall maintain the Area of Common Responsibility in a manner consistent with the Governing Documents and the Village Standard.

Declarant or by the Board (with Declarant's consent during the Development and Sale Period) may designate that portion of any Parcel, or areas within such portion, between the front of the predominant structure on the Parcel and any street within Ward Village as Area of Common Responsibility and provide that the Owners Association shall be responsible for maintaining, as a Common Expense, streetscapes, common sidewalks, and landscaping within such area. Parcel Owners may not install or remove improvements, trees, shrubs, or other vegetation in or from this area without prior approval pursuant to Chapter 5.

The Owners Association may also assume maintenance responsibility for other parts of any Parcel, upon designation of such areas as a portion of the Area of Common Responsibility.

In addition, upon the Board's determination that the level and quality of maintenance then being provided on a Parcel is not consistent with the Village Standard or an applicable Supplement, and after notice and an opportunity to cure as provided in Section 8.2, the Owners Association may perform maintenance on a Parcel and assess the costs of providing such maintenance against the Parcel Owner. The Owners Association need not treat all similarly situated Parcels the same.

6.3. Responsibility for Repair and Reconstruction

(a) Scope of Maintenance Responsibility. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair, replacement, and reconstruction as necessary to maintain the property to a level consistent with the Village Standard.

(b) Obligation to Repair and Reconstruct. The development and uses of the various Parcels within Ward Village are interdependent to a significant degree. As such, each Parcel Owner covenants and agrees to repair or reconstruct damaged Improvements on its Parcel in a manner consistent with the original plans and specifications for such Improvement. The Parcel Owner shall commence repairs or reconstruction no later than six months after any damage and diligently pursue such repair or reconstruction to completion. The Board, in the exercise of its reasonable discretion, may extend or limit the time requirement for the commencement of repairs or reconstruction after taking into consideration the extent of damages, the Parcel Owner's recovery of insurance proceeds, financing, design and permitting issues, and other relevant factors. The Parcel Owner shall pay any costs that insurance proceeds do not cover.

(c) Enforcement Rights. In the event a Parcel Owner fails or refuses to repair or reconstruct an Improvement on its Parcel in accordance with this Section, the Owners Association, after notice and an opportunity to cure as provided in Section 8.2, shall be authorized to: (i) enter the Parcel and demolish the damaged or destroyed structure or other Improvement; (ii) remove all debris associated with such demolition; and (iii) sod, pave, or otherwise landscape the area in a manner consistent with the Village Standard. The Owners Association's costs incurred in connection with its actions under this sub-section shall be assessed against the Parcel and the Parcel Owner as a Specific Assessment under Section 13.4.

(d) Equivalent Units. In the event of damage to or destruction of an Improvement on a Parcel, the Parcel shall continue to be assigned the number of Equivalent Units for assessment and voting purposes as were assigned to the Parcel immediately prior to such damage or destruction, subject to any changes by Declarant or the Board as permitted in Exhibit "D."

(e) Village Standard. Notwithstanding the obligation to repair and reconstruct Improvements on a Parcel, the Parcel Owner shall be responsible at all times for maintaining the Parcel in a manner consistent with the Village Standard.

Chapter 7 Use and Conduct

This Chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Parcels. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within Ward Village to address changes over time.

7.1. Use, Occupancy, and Transfer of Interests in Parcels

(a) Leasing. The terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Parcel or any portion of a Parcel by any Person other than the Parcel Owner, for which the Parcel Owner receives any consideration or benefit.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Parcel are bound by, and obligated to comply with, the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

The Parcel Owner is responsible for providing the tenant copies of the Governing Documents. In addition, the Owners Association or the Board may adopt Rules governing leasing and subleasing. Upon request, a Parcel Owner or Sub-Unit Owner shall provide the Board written notice of the name of each tenant within its Parcel or Sub-Unit and such other information about the tenant as the Board may reasonably require.

(b) Transfer of Title; Notice of Sub-Unit Owners. Any Parcel Owner desiring to sell or otherwise transfer title to its Parcel shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require within 30 days of such transfer. In addition, a Parcel Association shall provide the Board such notice with respect to the transfer of title to a Sub-Unit. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Parcel Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

In addition to the above, each Parcel Owner, on an annual basis during the month of January, shall give the Board written notice of the name and address of each Sub-Unit Owner within its Parcel, which notice may be provided in electronic format or in such other manner as may be permitted by the Board.

(c) Subdivision and Combination of Parcels. No Person other than Declarant, Declarant Affiliates, or other Persons authorized by Declarant shall subdivide or change the boundary lines of any Parcel without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a Plat or other legal instrument reflecting the subdivision or new boundaries of the affected Parcel(s). In addition, Declarant's consent is required for any such action during the Development and Sale Period.

(d) Timesharing. Except as may be established or authorized by Declarant, a Declarant Affiliate, or a designee of Declarant or a Declarant Affiliate, no Parcel or Sub-Unit shall be used for operation of a timesharing, fraction-sharing, interval exchange, or similar program, or placed in use as part of a private residence, destination, vacation, or similar club program or arrangement, whereby exclusive use of the Parcel or Sub-Unit is made available to participants in the program, club, or arrangement either on a fixed or floating time schedule over a period of years or on a first come, first served basis. This prohibition is intended to be broadly construed and to cover plans such as those described, whether or not the plan is covered by Hawaii Revised Statutes, Chapter 514E, as amended from time to time.

(e) Quiet Enjoyment. No Person may use or permit the use of any portion of Ward Village, including any Parcel, in any way or for any purpose which may endanger the health or safety of, or unreasonably an-

noy or disturb, the Parcel Owners, occupants, guests, or invitees of any Parcel, or in such a way as to constitute, in the sole opinion of the Board, an unreasonable source of annoyance or a hazardous or offensive activity or use.

This restriction is not intended to prohibit normal and customary activities associated with permitted commercial or residential uses, including, without limitation, outdoor music systems in outdoor seating areas; provided, the Board may adopt reasonable Rules imposing limitations on, among other things, hours of operation, noise levels, and lighting associated with uses on the Parcels.

(f) Prohibited Uses. In addition to uses that are restricted by zoning or the Master Plan, the following uses are prohibited within Ward Village:

(i) trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

(ii) junkyards, scrap metal yards, sanitary landfills, automobile used parts sales facilities, and motor vehicle dismantling operations, except that auto specialty stores or boutiques (with any one store or boutique not to exceed 10,000 square feet) which display only a limited number of automobiles on-site at any particular time may be permitted upon approval by Declarant during the Development and Sale Period and, thereafter, by the Board;

(iii) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(iv) salvage businesses; provided, periodic Association sponsored or sanctioned events or activities on the Area of Common Responsibility (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(v) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);

(vi) tanning parlors, massage parlors, or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(vii) "adult entertainment uses," which shall include, for the purposes of this Community Covenant, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel); or (B) sexually explicit games, toys, devices, or similar merchandise;

(viii) mini-warehouses and warehouse/distribution centers;

(ix) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(x) dry cleaning plants; provided, facilities for drop-off or pick-up of items dry cleaned outside of Ward Village are permitted;

(xi) engine and motor repair facilities (except in connection with any permitted automobile service station);

(xii) heavy machinery sales and storage facilities;

(xiii) any use which would cause or threaten the cancellation of any insurance maintained by the Owners Association, or which would measurably increase insurance rates for any insurance maintained by the Owners Association or Parcel Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan.

In addition to the above, during the Development and Sale Period, Declarant may prohibit any use which it determines would be inconsistent with the Master Plan or the Village Standard or otherwise incompatible with Ward Village.

During the Development and Sale Period, Declarant shall determine, in its reasonable discretion, whether proposed uses or users are consistent with the standards and conditions set forth above. Thereafter, the Board, in the exercise of its reasonable judgment, shall make such determinations; provided, the Board shall be bound by all previous determinations.

(g) *Changes in Predominant Use.* Each Parcel Owner acknowledges and agrees that Ward Village, while containing a multitude of diverse uses, is intended as a coordinated and cohesive development in which the various uses relate to each other and co-exist in a complementary manner. As such, during the Development and Sale Period, any change in the pre-dominant use of a Parcel shall require Declarant's prior written approval. After termination of the Development and Sale Period, any such change shall require the written consent of the Board, which consent shall not unreasonably be withheld, conditioned, or delayed.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern Ward Village. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Owners Association must be able to respond to unforeseen issues and changes affecting Ward Village. Therefore, the Board and the Parcel Owners are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) *Declarant Authority.* So long as Declarant has the authority to amend this Community Covenant pursuant to Section 21.2(a), Declarant may amend Exhibit "C" to reflect modifications and additions to the Rules.

(b) *Board Authority.* Subject to the notice requirements in Section 7.2(d) and the Board's duty to exercise judgment and reasonableness on behalf of the Owners Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(c) **Membership Authority.** Subject to the notice requirements in Section 7.2(d), the Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association also may adopt new Rules and modify or rescind existing Rules at any meeting of the Owners Association duly called for such purpose, regardless of the manner in which the original Rule was adopted.

(d) **Notice.** The Board shall send notice to all Owners concerning a proposed Rule change at least five business days prior to the meeting of the Board or the Parcel Owners at which such action is to be considered. At any such meeting, Parcel Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(e) **Effective Date.** A Rules change adopted under this Section shall take effect 30 days after the date on which written notice of the Rules change is given to the affected Owners. New Rules or changes to existing Rules need not be recorded to be effective.

(f) **Declarant Approval.** As provided in Section 18.5, during the Development and Sale Period, any Rules change also shall require Declarant's approval prior to its becoming effective.

(g) **Administrative and Operating Policies.** The procedures set forth in this Section 7.2 do not apply to administrative and operating rules and policies that the Board may adopt relating to the Area of Common Responsibility, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such rules and policies may be published as part of the Rules set forth in Exhibit "C," as may be amended.

(h) **Conflicts.** No action taken under this Section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Community Covenant other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Community Covenant (exclusive of the Rules), this Community Covenant shall control.

7.3. Protection of Parcel Owners and Others

Except as may be set forth in this Community Covenant (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Parcels shall be treated similarly; however, the Rules may vary by location, use, or other distinct characteristics of areas within Ward Village.

(b) **Activities Within Parcels.** No Rule shall interfere with any permitted use of a Parcel, except that the Owners Association may prohibit activities which are inconsistent with the Master Plan, that create monetary costs for the Owners Association or other Parcel Owners, that create a danger to anyone's health or safety, that create unsightly conditions visible from outside of a structure, or that are an unreasonable source of annoyance. In addition, Section 7.1 prohibits or restricts certain uses within a Parcel.

(c) **Allocation of Burdens and Benefits.** No Rule shall alter the allocation of financial burdens among the various Parcels or rights to use the Area of Common Responsibility to the detriment of any Parcel Owner over that Parcel Owner's objection expressed in writing to the Owners Association. Nothing in

this provision shall prevent the Owners Association from changing the Area of Common Responsibility available; from adopting generally applicable rules for use of Area of Common Responsibility; or from denying use privileges to those who are delinquent in paying assessments, fines, or other charges, who abuse the Area of Common Responsibility or who otherwise violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 13.

(d) *Leasing and Transfer of Parcels.* No Rule shall prohibit leasing, mortgaging, or transfer of any portion of a Parcel or require approval prior to leasing, mortgaging, or transferring a Parcel.

(e) *Abridging Existing Rights.* No Rule shall unreasonably interfere with the permitted use or operation of a Parcel in full compliance with this Community Covenant and the Rules in effect immediately prior to the enactment of such Rule. In addition, no Rule shall require that a Parcel Owner dispose of personal property kept in or on a Parcel in compliance with the Rules in effect at the time such personal property was brought onto the Parcel.

 This provision protects the existing uses of Parcels. It is intended to prevent a situation in which a Parcel Owner is forced to halt the operation of a business that was allowed prior to a change in the Rules.

(f) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with Declarant's ability to develop, market, and sell property described in the Master Plan.

(g) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

7.4. Parcel Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Parcel Owner acknowledges and agrees that the use, enjoyment, and marketability of its Parcel is limited and affected by the Rules, which may change from time to time, subject to the limitations and protections provided in this Chapter. All Parcel purchasers are hereby notified that the Owners Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document.

A copy of the current Rules and all administrative policies shall be made available from the Owners Association upon request. The Owners Association may charge a reasonable fee to cover its reproduction cost.

7.5. Construction Activities on Parcels

Each Parcel Owner acknowledges and agrees that development and construction of Improvements throughout Ward Village will be on-going during the Development and Sale Period. While it is understood that some level of interference (e.g., temporary road closures, detours, etc.) will occur, reasonable efforts shall be made to minimize the impact of the development and construction of Improvements within any Parcel on the use or operation of other portions of Ward Village. Declarant may impose additional regulations governing development and construction activities, including the screening of construction staging areas.

7.6. Wireless Communications

Wireless Internet communications networks ("WiFi System(s)") may be installed or otherwise used in a Parcel provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in otherwise serving other portions of Ward Village. Declarant or the Owners Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installer of the system that proper precautions are being taken.

Each Parcel Owner is responsible for insuring that any WiFi System installed or otherwise used in its Parcel does not so interfere with, disturb, or intercept other signals, networks, or systems within Ward Village. The Owners Association may require that any WiFi System found to cause such problems be terminated. Notwithstanding the above, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Parcel will not interfere with, disturb, or intercept other signals, networks, or systems installed by the Owners Association or other Parcel Owners.

The Owners Association, Declarant, and their respective current and former partners, members, directors, officers, agents, employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation, use, or effectiveness of any WiFi System in Ward Village, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems within any Parcel.

In addition, during the Development and Sale Period, no Parcel Owner may charge a fee, or permit any Sub-Unit Owner or other occupant of the Parcel to charge a fee, for wireless Internet service without Declarant's prior written consent. Thereafter, the Owners Association's consent shall be required to offer or provide wireless Internet service for a fee.

Chapter 8 Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Parcel Owners and operators within Ward Village. This Chapter sets forth the obligation to comply and the remedies available to the Owners Association for noncompliance.

8.1. Compliance

Parcel Owners and Sub-Unit Owners must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Parcel Owner shall be jointly and severally responsible with the Sub-Units and tenants of any portion of its Parcel for, and may be sanctioned for, any violation of the Governing Documents by such Persons, and for any damage to the Area of Common Responsibility that such Persons may cause.



All Parcel Owners and occupants must abide by the Governing Documents and are subject to various penalties, including fines and the loss of the right to use the community facilities if they fail to do so.

8.2. Remedies for Non-Compliance

The Owners Association, Declarant, and affected Parcel Owners shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violations of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Notice and Opportunity for a Hearing. After written notice to the violator and the Parcel Owner, if different, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Parcel and/or Sub-Unit. In the event that any Sub-Unit Owner or tenant of a Parcel violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, assessment of the fine against the violator shall not absolve the Parcel Owner from responsibility or the obligation to pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 90 days delinquent in paying any assessment or other charge owed to the Owners Association);

(iii) suspend services the Owners Association provides to a Parcel or a Sub-Unit (except that no hearing is required if the Owner is more than 90 days delinquent in paying any assessment or other charge owed to the Owners Association);

(iv) exercise self-help or take action to abate any violation of the Governing Documents occurring on a Parcel in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) require a Parcel Owner, at its own expense, to (A) remove any structure or other Improvement on such Parcel Owner's Parcel in violation of Chapter 5, the Village Standard, or other requirements under the Governing Documents, and to restore the Parcel to its previous condition, or (B) perform such maintenance or other work on a Parcel as is required to bring the Parcel into compliance with the Village Standard or other requirements under the Governing Documents. Upon failure of the Parcel Owner to do so, the Board or its designee, after 10 days' written notice to the Parcel Owner, shall have the right to enter the property, remove or otherwise cure the violation, and restore the property to substantially the same condition as previously existed or to a condition which would otherwise be in compliance with the Governing Documents. Any such action shall not be deemed a trespass;

(vi) levy Specific Assessments to cover costs incurred by the Owners Association to bring a Parcel into compliance with the Governing Documents; and

(vii) record a notice of violation with respect to any Parcel on which a violation exists.

In addition to written notice, and except as otherwise provided, a violator shall be given the opportunity for a hearing in the manner provided in the By-Laws in connection with the above sanctions. Nothing in this Section 8.2(a) shall constitute a blanket lien prohibited by HRS, Section 514B-45.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without notice or the opportunity for a hearing:

(i) exercise self-help or take action to abate a violation on those portions of a Parcel which are not a part of the Area of Common Responsibility in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Area of Common Responsibility under any circumstances;

(iii) enter the property and exercise self-help to remove or cure a violating condition if a Parcel Owner fails to take action as required pursuant to subsection (a)(v) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iv) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Sanctions Against Sub-Unit Owners and Other Parcel Occupants. The Owners Association, by and through the Board, may enforce any provision of the Governing Documents, including any Rule, against any Parcel Owner, Sub-Unit Owner, or occupant of a Parcel or Sub-Unit; provided, the Parcel Owner ultimately is responsible for compliance with the Governing Documents by Sub-Unit Owners and other occupants of the Parcel Owner's Parcel. As such, any reference in Sections 8.2(a) and (b) to sanctions against the Parcel Owner shall also apply to sanctions against a violating Sub-Unit Owner or occupant of a Parcel, if different than the Parcel Owner.

In an appropriate situation, the Owners Association may assign or delegate all or any of its enforcement rights with respect to Sub-Unit Owners and other occupants of a Parcel to the Parcel Association for the Parcel.

(d) Declarant's Right to Impose Sanctions. In the event that the Owners Association fails or refuses to take action or impose sanctions after notice from Declarant of a violation of the Governing Documents, Declarant shall have the right to levy monetary charges on behalf of the Owners Association after notice and hearing in the same manner as the Owners Association under Section 8.2(a). In addition, Declarant may exercise self-help or take action to abate a violation or bring suit and law or in equity in the same manner as the Owners Association under Section 8.2(b).

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Owners Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) a technical violation is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Owners Association's resources; or

(d) that it is not in the Owners Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Owners Association from enforcing the same provision at a later time or prevent the enforcement of any other provision.

8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

8.5. Enforcement of Ordinances

The Owners Association, by contract or other agreement, may enforce applicable city ordinances. In addition, the City and County of Honolulu may enforce its ordinances within Ward Village.

PART THREE: ASSOCIATION OPERATIONS

Chapter 9 Promotion of Ward Village

This Chapter provides for the Owners Association's right to participate in promoting Ward Village.

9.1. Authority

The Owners Association may establish and implement programs and activities designed to promote Ward Village, including activities designed to project a positive image, and increase awareness and support of Ward Village. The Owners Association's promotional activities may include, but are not limited to, market research, public relations, and advertising services. It may engage in joint enterprises with other Persons or groups, including neighboring communities, to accomplish its promotional goals. It also may provide various services which the Board deems appropriate, such as programs designed to create employment opportunities within Ward Village.

The Owners Association may promote single entities or components within Ward Village, so long as the Board deems the promotion of single entities to be reasonably related to the promotion of Ward Village as a whole.

The Owners Association's activities under this Section may be on-site or off-site, or within or outside of the State of Hawaii, and may be conducted in cooperation with Persons who are not affiliated with Ward Village.

Unless the Board determines that such costs provide a desired benefit to the Community as a whole, the Owners Association's costs incurred in the promotion of Ward Village under this Chapter shall be levied as a Specific Assessment against non-residential uses under Chapter 13.

Activities and programs implemented by the Owners Association pursuant to this Section during the Development and Sale Period shall be subject to Declarant approval.

9.2. Advisory Committee

Prior to termination of the Declarant Control Period, Declarant may appoint a commercial advisory committee to assist the Owners Association in developing, implementing, and budgeting for promotional activities and programs for Ward Village. If appointed, the advisory committee shall consist of three, five, or seven persons, who shall be Parcel Owners, or representatives thereof, of Parcels used, in whole or in part, for non-residential purposes. The committee also may include marketing, advertising, or similar professionals as *ex officio* members, whose compensation, if any, shall be established by the Board upon the recommendation of the Parcel Owners serving on the committee.

The advisory committee shall conduct itself in accordance with the requirements for other Association committees set forth in the By-Laws and such other requirements as Declarant may impose when establishing the committee. During the Development and Sale Period, Declarant shall be an *ex officio* member of the advisory committee.

Chapter 10 Property Management

This Chapter establishes the Owners Association's obligation to accept ownership or other responsibility for property that Declarant designates as Area of Common Responsibility and to maintain, operate, and/or insure it for the benefit of Ward Village.

10.1. Acceptance and Control of Property

(a) Transfers, Dedications, and Conveyances by Declarant. Declarant, Declarant Affiliates, or their respective designees may transfer, dedicate, or convey to the Owners Association interests in real or personal property within or for the benefit of Ward Village, and the Owners Association shall accept such transfers, dedications, and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon Declarant's written request, the Owners Association shall reconvey to Declarant or a Declarant Affiliate any real property originally conveyed to the Owners Association for no payment, to the extent conveyed in error, needed to make minor adjustments in property lines, or needed to accommodate changes in the development plan.

(b) Management and Control. The Owners Association is responsible for management, operation, and control of the Area of Common Responsibility. The Owners Association may enter into leases, licenses, or operating agreements with respect to portions of the Area of Common Responsibility, for payment or no payment, as the Board deems appropriate. The Owners Association may permit use of Area of Common Responsibility facilities by persons other than Parcel Owners and occupants of Parcels and may charge use fees in such amount as the Board may establish for such use.

10.2. Maintenance of Area of Common Responsibility

The Owners Association shall maintain the Area of Common Responsibility in accordance with the Village Standard. The Area of Common Responsibility includes any Common Area and may also include, without limitation:

(a) private streets, alleys, streetscapes, sidewalks, public gathering areas, entry features, pedestrian bridges, open space, parks, recreational facilities, community landscaping, common utilities, common parking facilities, and other improved or unimproved areas within or serving Ward Village regardless of whether such areas are located within a Parcel's boundaries;

(b) such other portions of the Parcels, including portions of or areas within structures on Parcels which serve multiple Parcels or uses within or adjacent to Ward Village (*e.g.*, utilities or utility areas; elevators and/or stairwells; parking facilities; administrative offices; etc.), as may be dictated and designated by Declarant, this Community Covenant, a Supplement, or any other covenant or agreement for maintenance entered into by, or otherwise binding on, the Owners Association;

(c) landscaping, lighting, and other improvements within public rights-of-way within or abutting Ward Village to the extent that responsible governmental authorities do not maintain it to the Village Standard;

(d) such portions of any additional property as may be dictated by Declarant, this Community Covenant, a Supplement, or a covenant or agreement for maintenance entered into by, or otherwise binding on, the Owners Association; and

(e) any property and facilities that Declarant or a Declarant Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Owners Association and its Members. Declarant shall identify any such property and facilities by written notice to the Owners Association, and they shall remain part of the Area of Common Responsibility until Declarant revokes such privilege of use and enjoyment by written notice to the Owners Association.

The Owners Association may maintain property it does not own within or adjacent to Ward Village, including, without limitation, portions of Parcels, open space or parks or park-like areas serving the Community, or public rights-of-way and other property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Village Standard, or if such maintenance is otherwise assumed by Declarant or the Owners Association pursuant to agreements with or approval by the City and County of Honolulu, HCDA, or other governmental authorities.

Without limiting the generality of the foregoing, and to the extent not assumed by Parcel Owners, the Owners Association shall assume all of Declarant's maintenance responsibilities to the City and County of Honolulu or its governmental or quasi-governmental subdivisions, HCDA, any state and federal entities or agencies, and similar entities of any kind with respect to the Area of Common Responsibility, and shall indemnify and hold Declarant harmless with respect to such assumed responsibilities. In addition, the Owners Association shall comply with governmental or quasi-governmental permits, approvals, or regulations concerning the Community.

The Owners Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

At any time during the Development and Sale Period, Declarant may, by Supplement or recorded Plat or plans, designate portions of Ward Village, including portions of Parcels, as Area of Common Responsibility, or may more particularly describe areas otherwise designated by this Section, and such designations and descriptions shall be binding upon the Owners Association and the Parcel Owners. In addition, the Owners Association may designate portions of Ward Village as Areas of Common Responsibility as specifically or implicitly provided in this Community Covenant, including as provided in Section 6.2(b). The designation of Area of Common Responsibility within a Parcel shall not materially impede ingress to or egress from occupied areas within the Parcel or materially adversely impact any existing permitted use of the Parcel.

10.3. Operation of Area of Common Responsibility

In its discretion, the Board may: (a) temporarily close streets or other portions of the Area of Common Responsibility to accommodate street fairs, festivals, or other events within or serving Ward Village (subject to such notice or approval requirements that the City and County of Honolulu or HCDA may require); (b) establish reasonable rules and regulations concerning the use and operation of the Area of Common Responsibility; or (c) temporarily close or interrupt operation of the Area of Common Responsibility as it may determine appropriate to perform maintenance or repairs.

10.4. Restoring Damaged Improvements within the Area of Common Responsibility

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Owners Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Owners Association shall commence repairs or reconstruction of damaged Area of Common Responsibility improvements in a timely manner and shall endeavor to complete such work no later than one year after such damage occurs (subject to reasonable delays caused by events outside of the Owners Association's control), unless:

- (a) this Community Covenant is terminated pursuant to Section 21.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) within 180 days after the loss, a decision not to repair or reconstruct is approved by either: (i) with respect to general Area of Common Responsibility, other than Limited Benefit Area, a vote of Parcel Owners entitled to cast at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association; or (ii) with respect to Limited Benefit Area, consent of the Board and a vote of Parcel Owners and/or Sub-Unit Owners entitled to cast at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes attributed to Parcels and/or Sub-Units to which the Limited Benefit Area is assigned. If either the insurance proceeds or estimates of the loss, or both, are not available to the Owners Association within such 180-day period, then the period shall be extended until such funds or information are available.

In addition to the above vote requirements, during the Development and Sale Period, Declarant's consent is required for any decision not to repair or reconstruct Area of Common Responsibility improvements.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Owners Association in a neat and attractive condition consistent with Village Standard.

The insurance proceeds attributable to any Parcels or Limited Benefit Areas that are not rebuilt shall be distributed to the Parcel Owners of such Parcels and the Owners of Parcels or Sub-Units to which such Limited Benefit Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Owners Association expenses.

The Owners Association shall retain for the benefit of all Parcel Owners, or the Parcel Owners or Sub-Unit Owners within an affected Service Area, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Parcel Owners or Sub-Unit Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 12.4.

Notwithstanding the above, the provisions of the Hawaii Condominium Property Act, HRS 514B, with respect to repair and reconstruction of property shall also apply to those portions of the Area of Common Responsibility located within a Parcel governed by a condominium association.

10.5. Relationships with Other Properties

The Owners Association may enter into contractual arrangements or may be bound by a recorded covenant to provide for sharing of costs between Ward Village and the owner(s) of adjacent properties for the: (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services. During the Declarant Control Period, the Owners Association shall enter into such agreements or covenants upon Declarant's request.

Chapter 11

Provision of Services

In addition to its property management role, the Owners Association is a vehicle for providing a variety of services for the benefit of Ward Village at large and individual Parcels. This Chapter describes some of the services the Owners Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

11.1. Provision of Services

The Owners Association may arrange for or provide services to Parcel Owners and their Parcels, directly or through "arms-length" contracts with Declarant or other third parties. The Owners Association may enter into bulk service agreements by which a particular service is provided to all Parcels, or it may offer

various services at the option of particular Parcels, or both. By way of example and not limitation, such services might include such things as utilities, fire protection, security, trash collection, valet parking services, concierge services, landscape or building maintenance, pest control, transportation, recycling, and telecommunications or other similar community systems.

Services may be provided to all Parcels, to all Parcels improved with a completed and occupied structure ("**Improved Parcels**"), to all Parcels in a Service Area, or to particular Sub-Units or Parcels upon request. Services may be provided as a Common Expense pursuant to Section 13.1(a) or as a Service Area Expense pursuant to Section 13.1(b), as applicable, for which the Owners Association may levy assessments pursuant to Chapter 13; provided, unimproved Parcels need not be assessed for services available only to Improved Parcels (e.g., cable television). The Owners Association shall charge a separate use fee, in such amount as the Board may determine appropriate in its discretion, for any services offered at the option of an Owner, which fee shall be assessed against the benefited Parcel or Sub-Unit as a Specific Assessment pursuant to Chapter 13.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or the occupants of a Parcel or Sub-Unit, may result in termination of services provided to such Parcel or Sub-Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Parcel as a Common Expense or Service Area Expense pursuant to Chapter 13.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Owners Association to provide such services.

Any Owners Association contract for services shall be of reasonably limited duration.

11.2. Provision of Services to Service Areas

(a) Service Areas Designated by Declarant. The Owners Association shall provide services to any Service Area designated by Declarant pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Service Area.

(b) Service Areas Designated by Board. In addition to Service Areas which Declarant may designate pursuant to Section 3.2, any group of Parcel Owners (including a Parcel Association) and/or Sub-Unit Owners may petition the Board to designate their Parcels or Sub-Units (or a combination of Parcels and Sub-Units) as a Service Area for the purpose of receiving from the Owners Association: (i) special benefits or services which are not provided to all Parcels; or (ii) a higher level of service than the Owners Association otherwise provides. Any such petition shall be signed by Persons representing a majority of the votes allocated to the Parcels or Sub-Units within the proposed Service Area based upon the assignment of Equivalent Units under Exhibit "D" and by Declarant, if Declarant or a Declarant Affiliate owns any Parcel or Sub-Unit within the proposed Service Area.

Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and submit a proposal to the Parcel Owners and/or Sub-Units in the proposed

Service Area stating such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Parcel Owners and/or Sub-Unit Owners representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes allocated to the Parcels and/or Sub-Units within the proposed Service Area, based upon the assignment of Equivalent Units, approve the proposal in writing, the Board shall designate the Parcels as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 13.2(c).

(c) Service Area Voting – Sub-Units. In the event a proposed Service Area is to include a Parcel containing Sub-Units, only the Sub-Unit Owners of the Sub-Units within the Parcel, as opposed to the Parcel Owner of the Parcel, may sign the petition requesting designation as a Service Area. In calculating the votes with respect to such petition or any other matter calling for a vote within the Service Area, only the Equivalent Units assigned to the Sub-Units, and not all Equivalent Units assigned to the Parcel containing the Sub-Units, shall be considered and such votes shall be cast by the Sub-Unit Owners of the Sub-Units within the Service Area and not by the Parcel Owner of the Parcel containing such Sub-Units.

11.3. Community Technology

The Owners Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Owners Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Parcel Owners and business operators to interact and participate in Association-sponsored activities. To the extent Hawaii law permits, and unless otherwise specifically prohibited in the Governing Documents, the Owners Association may send notices by electronic means, hold Board or Owners Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Chapter 12 Insurance

The Owners Association is responsible for insuring against various types of risks, including damage to properties, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Owners Association and Parcel Owners must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

12.1. Required Coverages

The Owners Association shall obtain and maintain in effect the following insurance coverage, if reasonably available as determined in the Board's discretion, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on:

- (i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Owners Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Parcel within a Service Area, to the extent mandated by a Supplement or to the extent authorized by a Supplement and deemed appropriate by the Board.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted.

Provided such coverage is economically feasible, Owners Association property insurance shall not generally exclude coverage for loss or damage arising out of an act of terrorism. The limits of Owners Association property insurance policies shall be sufficient to cover the replacement cost of the insured improvements under current building ordinances and codes.

In addition, to the extent a Supplement so specifies, the Owners Association shall obtain and maintain property insurance on insurable Improvements within a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Owners Association and its Members for damage or injury caused by the negligence of the Owners Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$3,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. However, if additional coverage and higher limits are available at a reasonable cost such that a reasonably prudent person would obtain such insurance, the Owners Association shall obtain such additional coverages or limits. Such coverage may be provided through a combination of primary and umbrella policies;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage in the amount of at least \$3,000,000.00, if reasonably available, or, if not reasonably available, the highest amount of coverage available at reasonable cost; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Parcels plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Owners Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the City and County of Honolulu. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

12.2. Deductibles



The Board may hold any Person who causes damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Owners Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 12.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Parcel Owners or Sub-Unit Owners, or their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Parcel Owner(s) and their Parcel(s), or such Sub-Unit Owner(s) and their Sub-Unit(s), as a Specific Assessment.

12.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Owners Association and, upon request, to each Parcel Owner.

To the extent available at reasonable cost and terms, all Owners Association insurance shall:

- (a) be written with a company authorized to do business in Hawaii which holds an A.M. Best's rating of A-VII or better, if reasonably available, or, if not, the most nearly equivalent;
- (b) be written in the name of the Owners Association as trustee for the benefited parties. All policies shall be for the benefit of the Owners Association and its Members, as their interests may appear;
- (c) not be brought into contribution with insurance purchased by Parcel Owners or occupants individually;
- (d) contain an inflation guard endorsement; and
- (e) include an agreed amount endorsement, if the policy contains a co-insurance clause.

12.4. Association Insurance Premiums

Premiums for all Owners Association insurance shall be a Common Expense, except that premiums for property insurance benefiting just the Parcels within a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

12.5. Parcel Insurance

(a) **Required Coverages.** Each Parcel Owner, at its own cost and expense or at the cost and expense of Sub-Unit Owners within the Parcel, shall obtain and maintain, or provide for obtaining and maintaining, in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Blanket property insurance for the full replacement cost of all insurable Improvements on its Parcel, less a reasonable deductible, unless the Owners Association carries such insurance (which it may but is not obligated to do). If the Owners Association assumes responsibility for insuring a Parcel, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Parcel and the Parcel Owner;

(ii) Commercial general liability insurance, including contractual liability coverage, with a combined single limit of at least \$3,000,000.00 per occurrence, insuring against claims on account of personal injury, death, or property damage that may arise from or be occasioned by the condition, use, or occupancy of such Owner's Parcel or the use of any portion of Ward Village by such Parcel Owner or the tenants of such Owner's Parcel, and their respective employees, agents, and contractors. Such coverage may be provided through a combination of primary and umbrella policies. Such policy shall name the Owners Association and the Owners Association's members as additional insureds and, during the Declarant Control Period, also shall name Declarant as an additional insured;

(iii) Workers compensation insurance, employers liability insurance, and disability benefits insurance covering all persons employed by the Parcel Owner and any contractors, subcontractors, or other persons performing work on the Parcel, if and to the extent required by law;

(iv) During the construction or reconstruction of Improvements on a Parcel, builder's risk insurance (standard "All Risk" or equivalent coverage), in an amount not less than the cost of construction, written on a completed value basis;

(v) Business interruption insurance, to the extent reasonably available, in an amount sufficient to pay or provide for the payment of assessments and insurance required under this Community Covenant, and the payment of taxes and amounts due under any Mortgage on the Parcel for a period of at least one year following the event or occurrence giving rise to a claim for payment under such policy; and

(vi) such other insurance as may be provided by law.

(b) Policy requirements. Required Parcel or Parcel Owner insurance policies shall be subject to the same requirements as apply to Owners Association insurance policies under Section 12.3, as applicable.

(c) Indemnification. Each Parcel Owner shall indemnify and hold Declarant, Declarant Affiliates, the Owners Association, and every other Parcel Owner harmless from and against any damages, liabilities, penalties, actions, claims, and expenses (including reasonable attorneys fees and court costs) arising out of (i) the generation, use, presence, handling, storage, disposal, release, or discharge of materials or substances which are considered hazardous, toxic, or otherwise regulated under any federal, state or local law or ordinance on such Owner's Parcel or on other portions of Ward Village by the Parcel Owner or its agents or employees; or (ii) any violation of the Governing Documents or any applicable law by the Parcel Owner or its agents or employees.

12.6. Minimum Coverage Limits

References in this Chapter to minimum insurance coverages shall be deemed to refer to amounts as of the date of recording of this Community Covenant. At each five-year anniversary of the recording of this Community Covenant, the Board, acting in its discretion and without a vote of the membership, may in-

crease the then-current minimum coverage amounts by no more than the percentage increase in the Consumer Price Index over the preceding five-year period.

The "Consumer Price Index" or "CPI" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (Honolulu; Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency, or discontinued, then the index (or a substitute procedure that reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculation described above. In the event a dispute arises concerning the selection of such alternative index, the parties shall agree upon an alternate index.

Chapter 13

Association Finances

This Chapter provides for various types of funding to cover expenses that the Owners Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this Chapter authorizes the Owners Association to levy against the Parcels and collect from the Parcel Owners and the Sub-Unit Owners. Assessments are secured by a lien on each Parcel.

13.1. Association Expenses

(a) Common Expenses. Expenses that the Owners Association incurs, or expects to incur, in connection with the ownership (including property taxes), maintenance, operation, and insurance of the Area of Common Responsibility, and otherwise for the general benefit of Ward Village, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless Parcel Owners representing a majority of the total Residential Votes and a majority of the total Non-Residential Votes in the Owners Association (other than votes assigned to Parcels Declarant or a Declarant Affiliate owns) approve such expenditure.

The characterization of a particular expense as a "Common Expense" shall not preclude the Owners Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may benefit from the expenses incurred or share such expenses pursuant to this Community Covenant, any Supplement, or any other recorded covenant or agreement.

(b) Service Area Expenses. All expenses that the Owners Association incurs or expects to incur in connection with providing benefits and services to a Service Area, including expenses relating to ownership (including property taxes), maintenance, operation, and insurance of Limited Benefit Areas within or serving the Service Area and any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate.

13.2. Budgeting for and Allocating Association Expenses

(a) **Preparation of Budget.** Prior to the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Owners Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. So long as the Board exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers, in determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments (including amounts to which the Owners Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) **Calculation of Base Assessments.** Upon determining the total amount of income required to be generated through the levy of "**Base Assessments**," the Owners Association shall allocate such amount among all Parcels subject to assessment on the effective date of the budget based upon the assignment of Equivalent Units, as described in Exhibit "D." The amount allocated to each Parcel shall then be levied as a Base Assessment.

(c) **Calculation of Service Area Assessments.** The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Parcels or Sub-Units, as applicable, in the Service Area that are subject to assessment and levied as a "**Service Area Assessment**." Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be allocated based upon the assignment of Equivalent Units, as described in Exhibit "D."

Service Area Assessments shall be levied against Parcel Owners within the Service Area except where less than all of the Sub-Units within a Parcel are members of the Service Area. In such case, the Service Area Assessment shall be levied against only the Sub-Unit Owners of the Sub-Units within such Parcel, as opposed to the Parcel Owner of the Parcel.

All amounts the Owners Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Owners Association's general funds.

(d) **Declarant Subsidy Option.** Declarant may, but shall not be obligated to, reduce the Base Assessment or any Service Area Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 13.6(b)). Any such subsidy may be treated as a contribution, an

advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Owners Association and Declarant.

(e) Notice of Budget and Assessment; Right to Disapprove. At least 30 days prior to the budget becoming effective, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment or any Service Area Assessment to be levied pursuant to such budget, to the Parcel Owner of each Parcel responsible for a share of the expenses covered by such budget.

The Common Expense budget shall automatically become effective unless disapproved at a meeting by Parcel Owners representing at least 75% of the total Residential Votes and at least 75% of the total Non-Residential Votes in the Owners Association. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Persons representing at least 67% of the Residential Votes and at least 67% of the Non-Residential Votes allocated to the Parcels and/or Sub-Units within the Service Area.

Notwithstanding the above, during the Development and Sale Period, no Common Expense budget or Service Area budget may be disapproved without Declarant's consent.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Parcel Owners as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Parcel Owners and/or Sub-Unit Owners representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes within the Service Area. Any such petition must be presented to the Board within 15 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget for the previous year shall continue in effect until a new budget is determined.

(f) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Service Area Assessments at any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (e) above.

13.3. Special Assessments

The Owners Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget.

Except as otherwise specifically provided in this Community Covenant, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Parcel Owners and/or Sub-Unit Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes attributable to Parcels subject to assessment and shall be allocated among the Parcels based on the assignment of Equivalent Units, as described in Exhibit "D." Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Parcel Owners and/or Sub-Unit Owners representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes allocated to the Parcels and/or Sub-Units in the benefited Service Area and shall be allo-

cated in the same manner as Service Area Assessments under Section 13.2(c). In addition, during the Declarant Control Period, any Special Assessment shall also be subject to Declarant's written consent.

Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

13.4. Specific Assessments

In addition to other instances for which a Specific Assessment is authorized under this Community Covenant, the Owners Association may levy "**Specific Assessments**" against a particular Parcel or Sub-Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Parcel or Sub-Unit upon request of the Parcel or Sub-Unit Owner pursuant to any menu of optional services which the Owners Association may offer (which might include the items identified in Section 11.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) in the case of an Improved Parcel, to cover the charges for services provided to all Improved Parcels pursuant to any bulk service or similar agreement entered into by the Owners Association pursuant to Section 11.1;

(c) to cover costs incurred in bringing the Parcel or Sub-Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Parcel or Sub-Unit Owner or occupants of the Parcel or Sub-Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Parcel or Sub-Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection;

(d) to cover the Parcel's or Sub-Unit's pro rata share of any costs that the Owners Association incurs in bringing the Service Area of which the Parcel or Sub-Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Parcel Owners of Parcels, or Sub-Unit Owners of Sub-Units, in the Service Area and an opportunity for such Parcel or Sub-Unit Owners to be heard before levying any such assessment;

(e) to cover any deductible assessed pursuant to Section 12.2; and

(f) to cover any other amounts that the Governing Documents authorize the Owners Association to charge to a particular Parcel or Sub-Unit Owner or levy against any particular Parcel or Sub-Unit.

13.5. Authority to Assess Parcel Owners; Time of Payment

The Owners Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to a Parcel and any Sub-Unit within the Parcel on the date: (a) the Parcel or Sub-Unit is made subject to this Community Covenant; or (b) the Board determines a budget and levies assessments pursuant to this Section, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Parcel or Sub-Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Parcel.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel and impose special requirements for Parcel Owners with a history of delinquent payment (two or more delinquent payments in the past). Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year; provided, the Board may permit assessments to be paid in two or more installments.

If any Parcel or Sub-Unit Owner is delinquent in paying any assessments or other charges levied on its Parcel or Sub-Unit, the Board may require all outstanding balances on all assessments to be paid in full immediately.

13.6. Obligation for Assessments



Each Parcel Owner agrees to pay all assessments levied against its Parcel. If the Parcel Owner does not pay on time, that Parcel Owner will be charged late fees on all past due amounts. Parcel Owners may not claim a reduction in their assessments due to action or inaction by the Owners Association.

(a) Personal Obligation. Each Parcel Owner covenants and agrees to pay when due all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum, or the highest rate permitted by Hawaii law, if less than 18%), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Parcel Owner and a lien upon each Parcel until paid in full; provided, in the case of a Parcel governed by a Parcel Association or in the case of a Service Area Assessment levied directly against a Sub-Unit, the Owners Association's lien shall be upon each Sub-Unit within the Parcel or Service Area in a pro rata amount corresponding to the Sub-Unit's share of any unpaid assessment or other charge, as determined based upon the assignment of Equivalent Units, as described in Exhibit "D;" and provided further, the Owners Association's lien shall not constitute a blanket lien prohibited by HRS, Section 514B-45.

Any Sub-Unit Owner may obtain a release of its Sub-Unit from such personal obligation or the Owners Association's lien by paying to the Owners Association its pro rata share of the amount secured by such lien. However, the release of any individual Sub-Unit Owner from the personal obligation or lien for assessments shall not be a waiver of the Owners Association's right to pursue payment of all unpaid assessments and other charges from the Parcel Owner and/or other Sub-Unit Owners.

Upon a transfer of title to a Parcel or a Sub-Unit, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail an assessment notice shall not be deemed a waiver, modification, or a release of any Parcel or Sub-Unit Owner from the obligation to pay assessments. In such event, each Parcel and Sub-Unit Owner shall continue to pay Base Assessments and Service Area Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Owners Association may retroactively assess any shortfall.

No Parcel or Sub-Unit Owner shall be exempt from liability for assessments by non-use of any portion of the Area of Common Responsibility, abandonment of a Parcel, or non-use of services provided within the Service Area to which the Parcel is assigned. The obligation to pay assessments is a separate and inde-

pendent covenant on the part of each Parcel Owner and, as applicable with respect to Service Area Assessments, on the part of a Sub-Unit Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Owners Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Owners Association shall furnish to any Parcel Owner or Sub-Unit Owner liable for any type of assessment a certificate signed by an Owners Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Owners Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) *Declarant's Financial Obligations to Owners Association.* Declarant shall be liable for assessments on any Parcels or Sub-Units it owns, and Declarant Affiliates shall be subject to assessments on Parcels or Sub-Units which they own, that are subject to assessment. However, during the Declarant Control Period, Declarant may satisfy the obligation to pay Base Assessments, Special Assessments, and Service Area Assessments, on Parcels and Sub-Units owned by Declarant or a Declarant Affiliate either: (i) by paying such assessments in the same manner as any other Parcel or Sub-Unit Owner; or (ii) by paying any shortfall under the Common Expense or Service Area Expense budget, as applicable, resulting from events other than failure of other Parcel or Sub-Unit Owners to pay their assessments; provided, Declarant may, but shall have no obligation to, pay amounts budgeted to its Parcels for reserves or fund any shortfall in budgeted contributions to reserves. In the event Declarant's payments under subpart (ii) exceed what it otherwise would owe under subpart (i), such excess amount shall be treated as a Declarant subsidy under Section 13.2(d).

After termination of the Declarant Control Period, Declarant and Declarant Affiliates shall pay assessments on any Parcels or Sub-Units they own that are subject to assessment under Section 13.5 in the same manner as any other Owner liable for such assessments.

Regardless of Declarant's election under this Section, any of Declarant's financial obligations to the Owners Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

(c) *Allocation of Assessments Within a Parcel.* With respect to any Parcel containing Sub-Units, the Parcel Association for the Parcel shall include assessments levied against the Parcel by the Owners Association as a line item in the Parcel Association's budget. If all of the Sub-Units within the Parcel have the same Land Use Classification under Exhibit "D" (e.g., Sub-Units within a residential condominium), then the Parcel Association may allocate and levy assessments levied against the Parcel among the Sub-Units in accordance with the assignment of Equivalent Units under Exhibit "D" or pursuant to the Parcel Association's governing documents, as the Parcel Association board may determine. For example, the Parcel Association may allocate and levy assessments levied against the Parcel based on the percentage of common interest allocated among the Sub-Units if that is the method by which assessments are allocated in the Parcel Association's governing documents.

If Sub-Units within the Parcel have different Land Use Classifications (e.g., a Parcel may contain residential Sub-Units and retail Sub-Units), the Parcel Association shall first allocate assessments levied against the Parcel under this Chapter between the Land Use Classifications within the Parcel in accordance with the

assignment of Equivalent Units, as described in Exhibit "D." This first allocation among each group of Sub-Units with the same Land Use Classification shall apply notwithstanding any differing allocation formula by which the Parcel Association assesses its members under other covenants applicable to the Parcel.

The second allocation among each group of Sub-Units within the Parcel with the same Land Use Classification may be pursuant to the Parcel Association's governing documents. For example, residential Sub-Units within a Parcel, as a group, shall be allocated the number of Equivalent Units assigned to such residential Sub-Units under Exhibit "D;" however, the Parcel Association may allocate and levy the assessment to each residential Sub-Unit pursuant to the percentage of common interest allocated only among the residential Sub-Units if that is the method by which assessments are allocated in the Parcel Association's governing documents.

13.7. Lien for Assessments

(a) Existence of Lien. The Owners Association shall have a lien against each Parcel to secure payment of assessments, as well as interest, late charges (subject to the limitations of Hawaii law), and costs of collection (including attorneys fees and expenses); provided, in the case of a Parcel governed by a Parcel Association, and in the case of any assessment or other charge levied directly against a Sub-Unit, the Owners Association's lien shall be upon each Sub-Unit in a pro rata amount corresponding to the Sub-Unit's share of any unpaid assessment or other charge, as determined based upon the assignment of Equivalent Units, as described in Exhibit "D." Such lien shall be superior to all other liens, except: (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (ii) subject to the obligation for assessments set forth in Section 13.7(c), the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgage on the Parcel or Sub-Unit and which is recorded prior to the date that an assessment or other charge subject to the Owners Association's lien becomes delinquent.

Although no further action is required to create or perfect the lien, the Owners Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Parcel or Sub-Unit the amount of the delinquent sums due the Owners Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Owners Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) Enforcement of Lien. The Owners Association may bid for the Parcel or Sub-Unit, as the case may be, at the foreclosure sale and acquire, hold, lease, mortgage or otherwise encumber, and convey the Parcel or Sub-Unit. While a Parcel or Sub-Unit is owned by the Owners Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Parcel or the other Sub-Units within the Sub-Unit's respective Parcel Association shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Parcel or Sub-Unit had it not been acquired by the Owners Association.

The Owners Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) Effect of Sale or Transfer. Sale or transfer of any Parcel shall not affect the assessment lien or relieve such Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Parcel

pursuant to foreclosure of a first Mortgage having priority over the Owners Association's lien pursuant to Section 13.7(a) shall extinguish the lien as to any installments of such assessments due more than six months prior to the Mortgagee's foreclosure. The subsequent Parcel Owner of the foreclosed Parcel shall not be personally liable for assessments on such Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from all Parcel Owners subject to assessment under Section 13.5, including such acquirer, its successors and assigns.



If a Parcel Owner does not pay its assessments on time, the Owners Association may foreclose its lien on the Parcel Owner's Parcel or on the Sub-Units within a Parcel, causing the Parcel or Sub-Units, as the case may be, to be sold to pay the past due assessments. If a Sub-Unit Owner does not pay its assessments on time, the Owners Association may foreclose its lien on the Sub-Unit. The Owners Association may also sue a Parcel or Sub-Unit Owner in court to recover past due assessments.

13.8. Use and Consumption Fees

The Owners Association may offer services or facilities for which it does not recover its costs through assessments under this Chapter. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Parcel Owners, Sub-Unit Owners, and non-Owners).

13.9. Exempt Property

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility to which title has passed; and
- (c) Property owned by any Parcel Association for the common use and enjoyment of its members, or owned by all of the members of a Parcel Association as tenants-in-common.

In addition, both Declarant and the Owners Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, hospitals, police or fire stations (or other similar public service uses), Parcels or Sub-Units conveyed to governmental authorities, or Parcels or Sub-Units owned by Persons qualifying for tax-exempt status under Section 501(c) or 509(c) of the Internal Revenue Code and used by such Persons for purposes listed in such sections of the Internal Revenue Code.

Exemptions granted by Declarant shall be binding on the Owners Association. Exemptions granted by the Owners Association are subject to approval by Declarant during the Declarant Control Period.

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Chapter 14 Easements

The easements created or provided for in this Chapter establish the rights of Parcel Owners to use the Common Area and create various rights for the benefit of Parcel Owners, Declarant, the Owners Association, and others over property within Ward Village.

14.1. Easements in Area of Common Responsibility



An easement is one person's right to go onto the property of another.

Declarant hereby grants to each Parcel Owner and the permitted users of a Parcel a non-exclusive right and easement of use, access, and enjoyment in and to the Area of Common Responsibility, subject to:

(a) The Governing Documents and any other applicable covenants or ground leases recorded prior to the recording of this Community Covenant;

(b) Any restrictions or limitations contained in any deed conveying property to the Owners Association or in any Supplement designating portions of Parcels as Area of Common Responsibility;

(c) The use of all or portions of the Area of Common Responsibility by the general public or third parties designated as beneficiaries of rights or easements in any covenants or agreements binding upon Declarant or the Owners Association and entered into prior to the recording of this Community Covenant;

(d) The holding of street fairs or festivals or other public or private events within Ward Village; and

(e) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Area of Common Responsibility;

(ii) suspend a Parcel Owner's, or a Sub-Unit Owner's, right to use facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Community Covenant; and

(iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) Certain Parcel Owners' rights to the exclusive use of those portions of the Area of Common Responsibility designated as Limited Benefit Area; and

(g) The designation of portions of the Area of Common Responsibility as reserved for Owners Association use relating to maintenance, operations, or administration of the Owners Association (e.g., equipment, mechanical, or utility rooms, storage areas, and other areas not intended for general use and enjoyment).

Notwithstanding the Board's right to regulate use of the Area of Common Responsibility, no regulation or restriction shall unreasonably restrict or deny access to a Parcel by the Parcel Owner or other permitted users of the Parcel.

14.2. Easements Over Parcels

(a) Easements Over Streets, Sidewalks, and Pathways. Declarant hereby grants to the Owners Association, each Parcel Owner, the permitted users of a Parcel, and their guests and invitees, non-exclusive rights and easements over each Parcel for the use and enjoyment of streets within a Parcel and exterior sidewalks and pedestrian pathways within a Parcel located along public or private streets or which provide access to public use areas. The right to use streets, sidewalks, or other pedestrian pathways on a Parcel shall be subject to reasonable regulation and control by the Owners Association in the same manner as pertains to the Owners Association's control over other portions of the Area of Common Responsibility. Notwithstanding the above, the Parcel Owner of any affected Parcel may prohibit public access to and use of sidewalks and pedestrian pathways within or between Parcels that do not provide access to public use areas.

Members of the general public visiting Ward Village shall be invitees or guests of the Owners Association and the Parcel Owners for purposes of this Section 14.2(a). However, the privileges afforded members of the general public shall not be deemed to grant a vested right to the general public for use of and access to any portion of Ward Village or to require any consent or approval by members of the general public to modify, restrict, or rescind such privileges.

(b) Right to Access and Use Open Space Areas. Declarant reserves the right to designate open space areas within a Parcel (other than streets, sidewalks, and pathways addressed in 14.2(a)) as public use open space ("**Public Use Space**"). Public Use Space may be designated as Area of Common Responsibility or Declarant may grant to the Owners Association, for the benefit of the Owners Association and its members, guests, and invitees, the non-exclusive right periodically to hold, sponsor, or otherwise conduct community events and programs on or in such areas. The right to use Public Use Space shall be subject to reasonable regulation by the Owners Association and the Parcel Owner shall not be permitted to deny the Owners Association the right to use Public Use Space for community purposes.

(c) Central Telecommunication Receiving and Distribution System. Declarant reserves for itself, Declarant Affiliates, and their respective successors and assignees, the perpetual right and easement over Parcels within Ward Village to construct, install, use, maintain, repair, replace, improve, remove, operate, and access such telecommunication (including cable television, high speed data/Internet/intranet services, cellular telephone, and satellite television) receiving and distribution apparatus and equipment ("**Telecommunications Systems**") as Declarant, in its reasonable discretion, deems appropriate. Declarant's rights and easements under this Section 14.2(c) shall include, but not be limited to, the right to place components of Telecommunications Systems on rooftop areas and the right reasonably to access such systems through the structures on which the Telecommunication System are placed.

(d) Parking Facilities. One or more Parcels contain parking facilities may be made available in whole or in part for use by parties other than the Parcel Owner or the occupants of the Parcel (*e.g.*, parking facilities may be available for use by other Parcel Owners or occupants, the owners or occupants of properties adjacent to or otherwise in the vicinity of Ward Village, or the general public). Any such parking facilities may be designated as Area of Common Responsibility to be owned, operated, and/or maintained by the

Owners Association. Declarant hereby grants to the Owners Association such rights and easements, including easements of access, ingress, and egress over the Parcel, as are necessary or appropriate in connection with the maintenance, operation, and administration of such parking facilities.

In the exercise of such rights and easements, the Owners Association, in the Board's discretion, may, without limitation, enter into maintenance and/or operational agreements, including agreements for valet services, with third parties; make such improvements to the parking facilities as deemed necessary or appropriate (e.g., installation of speed bumps, security equipment, gates or other entry control devices, etc.); promulgate and enforce Rules and regulations governing use of the parking facilities (e.g., speed limits, designation of parking spaces); employ or otherwise permit the employment of parking attendants to administer and monitor the use of such parking facilities; and issue identifying cards, stickers, tokens, or the like as reasonably necessary to monitor, enforce, and regulate parking in its levels and to charge a fee to offset the actual cost of such items.

The Owners Association's costs and expenses relating to the maintenance, repair, insurance, operation, and administration of parking facilities within Parcels may be allocated among all Parcels as a part of the Base Assessment; among those Parcels, Sub-Units, and/or uses entitled to use such parking facilities as a Service Area Assessment; or among Parcel and/or Sub-Unit Owners and such third parties as have rights to use parking facilities within Ward Village.

Except as otherwise provided above, the drive lanes within any parking facility located within a structure on a Parcel shall not be blocked in a manner that impedes or prohibits access to parking levels exclusively serving the Parcel.

(e) Security Systems. Declarant reserves for itself, Declarant Affiliates, and their respective successors and assignees, and grants to the Owners Association and its successors and assigns, the perpetual right and easement over Parcels within Ward Village to install, use, maintain, repair, replace, improve, remove, operate, and access such security-related equipment, including video and other monitoring or surveillance equipment, as any of such benefited parties, in its reasonable discretion, deems appropriate. The rights and easements under this Section 14.2(e) shall include, but not be limited to, the right to place such equipment on or within structures on Parcels and the right reasonably to access such equipment through such structures.

(f) Location of Easements. To the extent feasible, those areas within the Parcels subject to the easement rights described in this Section shall be shown on a Plat or otherwise specifically described in a Supplement or other recorded instrument; provided, the failure to describe easement rights in a separate recorded instrument shall not affect the validity of such easements as described above. During the Development and Sale Period, any easement of access across a Parcel may be relocated on the Parcel with the consent of Declarant and the Parcel Owner. Thereafter, the Owners Association's consent is required to relocate such easement areas, which consent shall not unreasonably be withheld, conditioned, or delayed.

14.3. Easements for Maintenance, Emergency, and Enforcement



The Owners Association may come onto the exterior portions of a Parcel to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.

Declarant hereby grants to the Owners Association an easement and right of entry over and into the Parcels as necessary to enable the Owners Association to fulfill its maintenance, operations, and administration responsibilities and to exercise its enforcement rights under the Governing Documents. The Owners Association shall have the right, but not the obligation, to enter upon any Parcel, including any structure within a Parcel, for emergency, security, or safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, to enforce the Governing Documents, and to operate and administer the Area of Common Responsibility. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Parcel Owner.

Declarant further grants and reserves perpetual, non-exclusive easements for access, ingress, and egress over any private streets within Ward Village, for law enforcement, firefighting, paramedic, rescue, and other emergency vehicles, equipment and personnel; for U.S. Postal Service and other package delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to Ward Village; provided, such easements shall not authorize any such Persons to use private streets within the Community except while acting in their official capacities.

14.4. Easements for Utilities and Other Infrastructure

Declarant grants and reserves easements throughout Ward Village which benefit Declarant, the Owners Association, the Parcel Owners, or other third parties and are reasonably necessary to:

- (a) install improvements, utilities, and other infrastructure to serve Ward Village;
- (b) install walkways, pathways, trails, street lights, and signage to serve Ward Village;
- (c) inspect, maintain, repair, and replace the Area of Common Responsibility, utilities, infrastructure, and other improvements described above; and
- (d) access and read utility meters.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

In addition, Declarant shall have the non-exclusive right and power to grant and record such other specific easements over the Parcels as it deems necessary to develop Ward Village; provided, no such easement may unreasonably interfere with the use or operation of the Parcel or any improvements to the Parcel without the written approval of the owner of the burdened property, which approval shall not unreasonably be withheld, conditioned, or delayed.

14.5. Easements and Rights of Entry to Facilitate Development and Operations

Declarant hereby reserve to itself and grants to Declarant Affiliates and the employees, duly authorized agents, designees, successors, and assigns of Declarant and Declarant Affiliates, an easement and right of entry, and the right to grant temporary easements of access and use, over and upon all or any portion of Ward Village (but not through a structure) for the exercise of Declarant's rights set forth in Chapter 18 and all other purposes reasonably related to making, constructing, and installing improvements to the Commu-

nity and to the Additional Property (whether or not such property is made subject to this Community Covenant), for the marketing and sale of Parcels, and for operation of the Community.

Such right of entry and temporary easements include, but are not limited to: (a) a right of ingress and egress over Parcels, the Common Area, and other portions of the Area of Common Responsibility for construction of roads and other improvements, including connecting and installing utilities on such property; (b) a right of ingress and egress over, and the right to use, Parcels, the Common Area, and other portions of the Area of Common Responsibility for marketing and sales purposes as described in Section 18.3; (c) slope and construction easements for each separate construction project on a Parcel or Common Area; (d) easements for installation of drainage systems, water and other utilities, erosion control, and storm and sanitary sewer systems (including the right to prune or remove trees, bushes, and shrubbery, to regrade soil, and to take any similar actions reasonably necessary); (e) easements for mobilization and storage of construction equipment, materials, and supplies necessary for the construction of improvements; and (f) easements for noise, dusts, and other annoyances relating to the exercise of the easements described in this Section.

14.6. Easements Between Adjacent Properties

(a) Easements of Encroachment.



An encroachment occurs when a building, fence, or other structure on a Parcel extends onto a neighboring Parcel. This Section permits minor, inadvertent encroachments to remain.

Declarant hereby grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. Unless considered *de minimus* under Hawaii law, an encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Easements of Support and Construction. Declarant hereby grants reciprocal appurtenant easements over, under, across, and between adjacent Parcels and each Parcel and any adjacent Common Area for the installation and maintenance of underpinning or other footing and foundation support systems, and sheeting, shoring, and other forms of earth retention, including tiebacks and other required components. Such easements shall permit the temporary use of adjacent properties for the construction and installation of such support systems and the permanent use of adjacent properties for the continued placement and maintenance of such systems.

The support system(s) benefiting any Parcel shall be designed, inspected during installation and upon completion of installation, and certified by a professional engineer registered in the State of Hawaii. Any such support system also shall be subject to Reviewer approval in accordance with Chapter 5 and the approval of the Parcel Owner of any adjacent, burdened Parcel, which approval shall not unreasonably be withheld, conditioned, or delayed.

Every portion of a Parcel contributing to the support on any portion of any other Parcel or Common Area shall be burdened with a perpetual easement of support for the benefit of such other property.

(c) Easements for Use of Air Space. Declarant hereby grants reciprocal appurtenant easements over and between adjacent Parcels and each Parcel and any adjacent Common Area for the use of air space as reasonably necessary during construction and maintenance of Improvements on a Parcel. The permitted use of air space includes the right to install and use scaffolding, towers, and cranes, and the right to swing a crane and its load, over the air space of any adjacent Parcel or Common Area during the construction of Improvements on a Parcel and during the maintenance, repair, cleaning, and inspection of Improvements on a Parcel.

14.7. Right of Entry for Purposes of Inspection and Right to Correct



Declarant, or someone it designates, may enter onto any Parcel to inspect and correct problems with the Parcel. Declarant must give the Owner of the Parcel prior notice, and if entering an enclosed structure on the Parcel, obtain the Parcel Owner's prior consent unless it is an emergency.

During the Development and Sale Period, Declarant hereby grants to and reserves for itself and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, Improvement, fixture, or condition that may exist on any portion of the property within Ward Village, including Parcels, and a perpetual non-exclusive right and easement of access throughout Ward Village to the extent reasonably necessary to exercise such right.

14.8. Easements for Cross-Drainage

All portions of Ward Village shall be burdened with easements for drainage of water runoff from other portions of Ward Village; provided, no Person shall alter the natural drainage on any Parcel from that drainage pattern initially established by Declarant or a Declarant Affiliate to increase materially the drainage of storm water onto adjacent portions of Ward Village without the consent of the Parcel Owner(s) of the affected property, the builder(s) of the affected Parcel(s) (*i.e.*, the discharging and receiving Parcels). In addition, Declarant's consent shall be required for any such alteration during the Development and Sale Period.

14.9. Easement for and Reservation of Sub-Surface Rights

Declarant hereby grants to and reserves for itself and others it may designate, perpetual rights to, and an easement over, under, and through Ward Village for drilling, mining, and other activities associated with, water, mineral, gas and other sub-surface materials; provided, Declarant shall not be permitted to destroy or disturb the use of any Parcel in the exercise of such rights.

14.10. Exercise of Rights of Entry and Easements; Minimal Interference

Any Person exercising any right or easement described in this Chapter shall minimize interference with the use and enjoyment of the Parcel or Common Area burdened by the easement. Persons exercising such right or easement shall be responsible for any damage caused to Common Area or any Parcel as a result of their actions in connection with the exercise of such easement rights. Upon completion of any work pursuant to a right or easement, the Person exercising the right or easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. All work performed pursuant to a right or easement under this Chapter shall be performed in a good and workmanlike manner in accordance with all applicable laws.

The exercise of rights or easements under this Chapter shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of any Parcel. In the case of any right or easement permitting work to be performed on a Parcel, except in an emergency, entry onto the Parcel for such purpose shall be made only after reasonable notice to the Parcel Owner and the occupant of that portion of the Parcel for which entry is desired.

14.11. Easements Under Prior Covenants and Agreements

The easements granted and reserved in this Chapter 14 and elsewhere in this Community Covenant shall be in addition to those easements granted or reserved to third parties under ground leases or other agreements binding upon all or portions of Ward Village which became effective prior to the recording of this Community Covenant.

14.12. Termination of Easements

The easements granted and reserved in this Chapter 14 and elsewhere in this Community Covenant shall not be altered or terminated during the Development and Sale Period without Declarant's written consent.

Chapter 15 Disclosures and Waivers

This Chapter discloses some important information about Ward Village for the benefit of prospective purchasers of Parcels.

15.1. Facilities and Services Open to the Public

Certain facilities and areas within Ward Village shall be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: roads, sidewalks, parks, and other gathering areas. Areas may become open to the public by dedication of ownership and/or maintenance responsibility to the City and County of Honolulu or another governmental or quasi-governmental entity. In addition, Declarant may dedicate such areas to the public or may designate such facilities and areas as open to the public prior to their being conveyed to the Owners Association or a Parcel Owner, as applicable. Thereafter, the Board may designate portions of the Area of Common Responsibility as being available for public use at any time, subject to such regulations and restrictions on use as the Board may impose.

15.2. No Liability for Third Party Acts

Each Parcel Owner and occupant of a Parcel, and their respective guests and invitees, shall be responsible for their own personal safety and the safety of employees, and patrons, and guests, and the security of their property in Ward Village. Declarant and the Owners Association may maintain or sponsor certain services and activities within Ward Village, and/or may coordinate with the City and County of Honolulu and law enforcement personnel with respect to such services and activities, designed to promote or enhance the level of safety or security which each person provides for itself and its property. Such services or activities may include, without limitation, video monitoring and surveillance and police presence with Ward Village. However, neither the Owners Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Ward Village,

nor shall any be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to any portion of Ward Village, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. **Each Parcel Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of its Parcel, that the Owners Association, the Board and Association committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Ward Village assumes (i) all risks of personal injury and loss or damage to property resulting from acts of third parties, and (ii) the obligation of procuring such insurance as may be available to cover any such risk to the Parcel Owner.**

15.3. Changes in Master Plan

Each Parcel Owner acknowledges that Ward Village is a master planned community, the development of which is likely to extend over many years and the particulars of which are likely to change from time to time. The creation and approval of the Master Plan does not constitute a representation or guarantee that all items or matters referenced or approved in the Master Plan will be built or otherwise accomplished, that the uses proposed in the Master Plan will be implemented as proposed, or that other uses will not be substituted for or permitted in lieu of uses previously permitted or required. In addition, each Parcel Owner acknowledges that the Master Plan in existence at the time of the recording of this Community Covenant may be subject to expiration prior to termination of the Development and Sale Period. As such, the Owners Association shall not, without Declarant's prior written consent, engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses, density, form, or massing of property within Ward Village; (b) changes in the Master Plan, including any extension of the time during which the Master Plan shall remain in effect; or (c) the creation or formation of a new Master Plan following the expiration of a previous or existing Master Plan..

15.4. Assignment of Rights and Obligations under the Master Plan

All or any of the rights and obligations granted or imposed under the Master Plan shall be freely assignable or transferable by Declarant to third parties, including the Owners Association, subject to such notice or consent as may be required under the Master Plan, and provided that the terms and conditions of the Master Plan shall be binding upon any such successors, assigns, or transferees.

15.5. View Impairment

Neither Declarant nor the Owners Association guarantee or represent that any view over and across any property within or outside Ward Village will be preserved without impairment.

15.6. Contaminated Soils

Portions of Ward Village may have been used in the past for industrial, manufacturing, or other similar purposes and may contain contaminated sub-surface soils and groundwater that may require remediation prior to development activities taking place. Each Parcel Developer and each Parcel Owner other than Declarant or a Declarant Affiliate shall be responsible for determining the existence of contaminated soils and

groundwater on its Parcel and for complying with such remediation requirements as may be imposed. Declarant, Declarant Affiliates, and the Owners Association shall have no obligation to remediate contaminated soils or groundwater on any Parcel except as may otherwise be required under a separate governmental order, covenant, or agreement binding upon Declarant, Declarant Affiliates, or the Owners Association.

15.7. Public Entertainment Activities

Each Parcel Owner, by acceptance of a deed to a Parcel, acknowledges that Ward Village may include various public attractions and that public activities and events, such as festivals, outdoor concerts, and similar activities and events, may be held within Ward Village. Each Parcel Owner acknowledges that such events and activities may result in annoyances, inconveniences, or hazards to persons and property on or in the vicinity of such events and activities.

Each Parcel Owner covenants, on behalf of itself, its heirs, successors, and successors-in-title, and all occupants of its Parcel, that it shall assume all risks associated with its use and ownership of property in the Community, including but not limited to, the risk of property damage or personal injury arising from or incidental to such public entertainment activities.

15.8. Relationship with Governmental and Tax-Exempt Organizations

The Owners Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements to, state or local governments, school systems, public utility providers, and nonprofit, tax-exempt organizations for the benefit of Ward Village, the Owners Association, and the Parcel Owners. The Owners Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Owners Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

15.9. Right to Designate Sites for Governmental and Public Interests

During the Development and Sale Period, Declarant may, but is not obligated to, designate and convey sites within Ward Village for government, education, or religious activities and interests, including fire, police, and utility facilities, schools and educational facilities, houses of worship, community-wide parks, recreational facilities, and other public facilities. Subject to the approval requirements set forth in Section 20.3, the sites may include Common Area, in which case the Owners Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

15.10. Excavation and Other Construction and Development Activities

All Parcels Owners, occupants, and users of Parcels are hereby placed on notice that Declarant, Declarant Affiliates, Parcel Developers, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct excavation, construction, and other development activities within Ward Village, which may cause increased traffic, noise, smells, windblown dust,

and other annoyances typically associated with such activities and that such activities and annoyances may impact the use and enjoyment of the Parcels.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of Ward Village, the Parcel Owners and all occupants and users of Parcels acknowledge, stipulate, and agree: (a) that such excavation and other construction activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally, regardless of their impact upon a Parcel; and (b) not to enter upon, or allow their pets, children, or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within Ward Village where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours).

Declarant, Declarant Affiliates, Parcel Developers, the Owners Association, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities.

15.11. Compliance with Governmental Permits and Approvals

Ward Village is subject to various governmental permits and approvals issued in connection with the development and use of the property. Each Parcel Owner shall be bound by the terms of all applicable permits and approvals and such permits and approvals shall apply and shall bind the Parcel Owners in accordance with their terms, notwithstanding anything to the contrary in the Governing Documents. Each Parcel Owner is responsible for determining which governmental permits and approvals apply to its Parcel and the extent to which they apply.

15.12. Urban Living; Quiet Enjoyment

Ward Village is a high-density area containing and surrounded by a variety of residential, commercial, and other uses. Life in Ward Village will include noises, smells, lights, sights, and behavior normally associated with city life. While the use and conduct restrictions set forth in this Community Covenant and the Rules are intended to enhance lifestyle and contribute to Person's right to the quiet enjoyment of his or her property within Ward Village, they will not and are not intended to eliminate or mitigate all conditions and behaviors normal and customary to urban environments and to permitted uses within Ward Village.

15.13. Archaeological/Historical Sites

There are various archaeological and historical sites, including burial sites, within Ward Village ("Sites") that may interfere with the development and construction of Improvements and/or require periodic protection and maintenance by the owner of the property on which such Sites are located or other third parties. Some Sites have been identified; however, others may exist that have yet to be discovered. The Sites that have yet to be discovered may be located on Parcels.

Declarant reserves for itself, its assigns, the Owners Association, and any governmental authority having jurisdiction over such Sites a nonexclusive perpetual easement over the Common Area and Parcels as re-

quired or deemed necessary to: (a) travel to and from the Sites; (b) inspect, evaluate, perform data recovery, maintain, and preserve the Sites from time to time; and (c) comply with federal and Hawai'i law or the requirements of any governmental or quasi-governmental entity that has jurisdiction over matters involving such Sites. Such easement shall affect only such portions of the Common Area and Parcels as are reasonably necessary for such purposes.

Such easements shall affect only such portions of the Common Areas and Parcels as Declarant or the Owners Association, as the case may be, deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions, and restrictions that Declarant or the Owners Association may impose consistent with federal and Hawai'i law.

Parcel Owners should exercise caution to avoid disruption of Sites and should take no action to prevent or hinder access to Sites. Persons utilizing easements pursuant to this Section should do so in a careful, considerate, and conscientious manner and take reasonable steps to avoid disturbing Parcel Owners and the Sites.

Neither Declarant nor the Owners Association shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Site or the designation or use of an easement related to such Site.

15.14. Hawaii Community Development Authority

The Hawaii Community Development Authority is a state-created authority established to plan for and revitalize areas in the State of Hawaii which the legislature finds to be in need of timely redevelopment. Pursuant to such authority, HCDA has jurisdiction over, and rights with respect to, the Kaka'ako Community Development District, of which Ward Village is a part, and the development or redevelopment of Ward Village pursuant to the Master Plan. The installation of infrastructure and the construction and use of Improvements within the Community are subject to, and required to comply with, HCDA plans and rules and may be subject to prior HCDA approval.

15.15. HCDA Agreements, Permits, and Rules

Ward Village is subject to, and developed or to be developed in compliance with, the terms of various permits and agreements by and/or between Declarant, Declarant Affiliates, and/or Declarant's and Declarant Affiliate's predecessors in interest, and HCDA, including, but not limited to, that certain Master Plan Development Agreement for the Ward Neighborhood Master Plan ("**Master Development Agreement**").

Declarant hereby reserves the right, without the consent or joinder of any other Person, to sign and record (if appropriate) such documents or instruments (including amendments to any of the Governing Documents), enter into such agreements and do all things that may be reasonably necessary to obtain such further permits and/or agreements as may be required by HCDA, the Master Development Agreement, and other agreements, permits, or rules imposed by or entered into with HCDA or other governmental authorities, and to comply with all applicable permits, laws, rules, ordinances, and other governmental requirements that pertain to Ward Village.

15.16. Rail System

Ward Village is an urban, pedestrian-oriented development which is intended to be accessible from other areas by various transportation means. While a rail system may be constructed to serve Ward Village in the future, Parcel Owners understand and acknowledge that neither Declarant nor any Declarant Affiliate makes any representations or guarantees with respect to the existence or location of a rail system to serve the Community. **Parcel Owners acknowledge that a rail system, if constructed, may produce noise, vibrations, smells, lights, and other disturbances which may impact life in Ward Village.**

15.17. Sustainable Development Principles and Practices

It is intended that development of Ward Village be consistent with sustainability standards and requirements imposed for Leadership in Energy and Environmental Design ("**LEED**") certification by the U.S. Green Building Council, or with such other, similar requirements as Declarant may impose. Without limitation, use restrictions, Rules, and the Design Guidelines for the Community may impose requirements with respect to, for example, nighttime lighting, the use of sustainable building materials and practices, and other sustainability standards. Declarant, the Owners Association, the Board, and the Reviewer may take into account such principles, practices, and concerns in setting standards and policies and in exercising discretion with respect to matters of review and approval.

Chapter 16 Rights of Lenders

In order to enhance each Parcel Owner's ability to obtain financing for the purchase and development of its property, this Chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers, and guarantors of Mortgages in Ward Village. The provisions of this Chapter apply to both this Community Covenant and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action

An institutional holder, insurer, or guarantor of a Mortgage which provides a written request to the Owners Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description and street address of the property to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Ward Village or which affects any Parcel on which there is a Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed to the Owners Association by a Parcel subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Parcel or the Parcel Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Owners Association; and

(d) Any proposed sanction to be taken against the Parcel on which the Eligible Holder has a Mortgage. In addition to notice, an Eligible Holder shall be given an opportunity to cure any violation in the same manner as a Parcel Owner under Section 8.2.

16.2. Other Provisions for First Lien Holders

In addition to any required vote of the Parcel Owners, the following actions shall require the approval of at least 51% of the Eligible Holders:

(a) An election not to restore or repair of any portion of the Area of Common Responsibility;

(b) An election to terminate the Owners Association;

(c) Any material amendment to any provision of this Community Covenant, the By-Laws, or the Articles, or the addition of any material provision thereto, which establishes, provides for, governs, or regulates any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) rights to use the Area of Common Responsibility;

(iv) the addition, annexation, or withdrawal of property to or from Ward Village, except as may be done unilaterally by Declarant as otherwise provided in this Community Covenant;

(v) matters identified as being for the express benefit of holders, guarantors, or insurers of first Mortgages on Parcels.

16.3. No Priority

No provision of this Community Covenant or the By-Laws gives or shall be construed as giving any Parcel Owner or Sub-Unit Owner priority over any rights of the holder of any Mortgage on any Parcel in the case of distribution to such Parcel Owner or Sub-Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

No breach of any of the provisions of this Community Covenant will defeat or impair the lien of any Mortgage made in good faith and for value on any portion of Ward Village. The terms and conditions of this Community Covenant, however, shall be binding on and effective against any party who acquires title to a Parcel or Sub-Unit by foreclosure, deed in lieu of foreclosure, or otherwise, and those claiming under them.

16.4. Notice to Association

Upon request, each Parcel Owner shall be obligated to furnish to the Owners Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

PART FIVE: COMMUNITY DEVELOPMENT

Chapter 17 Expansion of the Community

Declarant or the Owners Association may expand the initial property submitted to this Community Covenant as set forth in this Chapter.

17.1. Expansion by Declarant

From time to time, Declarant may submit to the terms of this Community Covenant all or any portion of the Additional Property by recording a Supplement describing the additional property to be submitted and designating such property as being so submitted. Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not Declarant.

Declarant's right unilaterally to expand Ward Village under this Section shall expire on December 31, 2045.

Nothing in this Community Covenant shall require Declarant or any successor to submit the Additional Property to this Community Covenant or to develop any of the Additional Property in any manner whatsoever.

Different Parcels of property may be submitted to this Community Covenant at different times. No assurances are given as to the boundaries of the parcels that may be submitted to this Community Covenant, or as to the order in which different parcels of property may be submitted to this Community Covenant.

17.2. Expansion by the Owners Association

The Owners Association also may submit additional property to this Community Covenant by recording a Supplement describing the additional property. Any Supplement which the Owners Association records must be approved by Parcel Owners representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes cast in person or by proxy at a meeting duly called for such purpose and by the owner of the property to be submitted. The Owners Association's President and Secretary, the owner of the property, and Declarant, if Declarant's consent is required, shall sign the Supplement.

During the Development and Sale Period, Declarant's consent is required for the Owners Association to submit additional property to this Community Covenant.

17.3. Additional Covenants and Easements

Any Supplement that Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Owners Association to maintain and insure such property and authorizing the Owners Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Community Covenant or may be set forth in a separate Supplement applicable to property previously submitted to this

Community Covenant. If someone other than Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent.

Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Community Covenant as it applies to the additional property described in the Supplement, in order to reflect the different character and intended use of such property.

17.4. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Community Covenant shall be assigned voting rights in the Owners Association and assessment liability based upon an assignment of Equivalent Units, as described in Exhibit "D."

Chapter 18

Additional Reserved Rights

This Chapter identifies various reserved rights, which are in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the development and sale of property in Ward Village.

18.1. Development and Special Declarant Rights

In addition to the rights specifically reserved to Declarant under Chapter 17 with respect to expanding Ward Village and such other rights as are provided for in the Governing Documents, Declarant reserves for itself and any Declarant Affiliate:

- (a) the right to complete or permit others to complete, or to not complete, any Improvements indicated on Plats and development plans or in the Master Plan;
- (b) the right to create, permit the creation of, merge, or permit the merger of condominium regimes on Parcels;
- (c) the right to create, or permit others to create, additional Parcels, Common Areas, and Area of Common Responsibility, including Limited Benefit Areas, and to designate and dedicate roadways, within any portion of Ward Village it or any Declarant Affiliate owns or on property conveyed by Declarant or a Declarant Affiliate to a Person to whom Declarant has delegated or assigned such rights;
- (d) the right to create or provide for amenities, facilities, and services to be owned, maintained, and operated by the Parcel Association for the benefit of all or particular Parcels and/or Sub-Units;
- (e) the right to subdivide or combine, or permit others to subdivide or combine, Parcels or to convert Parcels or portions of Parcels into Area of Common Responsibility (including Common Areas or Limited Benefit Areas) or roadways;
- (f) with respect to property that it or any Declarant Affiliate owns, the right to replat property, to convert Parcels into Common Area, and to convert any Common Area into Parcels;

(g) the right to withdraw from Ward Village any Parcel or any portion of a Parcel, subject to Section 18.2 and such local government approvals as may be required;

(h) the right to reconfigure the boundaries of the Area of Common Responsibility and the right to grant easements for use of the sidewalks and streets within Ward Village for adjacent commercial users;

(i) the right to maintain sales offices, management offices, and advertising signs on the property described in Exhibits "A" and "B," as set forth in Section 18.3;

(j) the right of access over the Area of Common Responsibility for the purpose of making Improvements within the property described in Exhibits "A" and "B";

(k) the right to close streets and sidewalks within Ward Village to allow their use for special events; and

(l) the right to appoint and remove any director or officer of the Owners Association during the Declarant Control Period as provided in the By-Laws.

The Owners Association, each Parcel Owner, and each Sub-Unit Owner hereby consents and agrees that Declarant shall have such rights and authority as set forth in this Section and hereby delegates and assigns to Declarant, as their true and lawful agent and attorney-in-fact, with full power of substitution, the right and authority to execute, deliver, and record such documents as may reasonably be necessary, in Declarant's discretion, to carry forth or otherwise accomplish any of such Declarant rights. The grant of such power, being coupled with an interest, is irrevocable for the term of Declarant's reserved rights, and shall not be affected by the disability of such party or parties. Further, the grant of such power shall be binding upon any assigns of, or successor-in-interest to, any such party and shall be deemed to automatically be granted anew by any assign or successor-in-interest upon any transfer of any Parcel or any interest therein, whether by deed, mortgage, or other instrument of conveyance.

18.2. Withdrawal of Property

Declarant reserves the unilateral right to amend this Community Covenant to withdraw any portion of Ward Village from the coverage of this Community Covenant, provided such withdrawal shall not materially adversely impact the common scheme of development established for Ward Village. In the event of a withdrawal of property containing Parcels, assessments and votes pertaining to property remaining in Ward Village shall continue to be allocated based upon the assignment of Equivalent Units as provided in Exhibit "D."

Any amendment to withdraw property shall not require the consent of any Person other than the Parcel Owner(s) of the property to be withdrawn, if not Declarant. If the property is a portion of the Area of Common Responsibility, the Owners Association shall consent to such withdrawal.

18.3. Construction and Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, Declarant and its designees or assigns may construct, use, and maintain upon portions of Parcels, the Common Area, and other property Declarant or a Declarant Affiliate owns or reserves rights in and to, such facilities and activities as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction of improve-

ments on, and marketing, leasing, and sale of, Parcels or any portions thereof. Such permitted facilities and activities may include business offices, signs, flags (whether hung from flag poles or attached to a structure), banners, balloons, sales offices, construction offices/trailers, holding or sponsoring special events and functions, and exterior lighting features or displays.

18.4. Right to Designate Area of Common Responsibility

Declarant may designate portions of Parcels as Area of Common Responsibility, including Limited Benefit Area, by recording a Supplement describing the portion of the Parcel being so designated. The right of any Parcel Owner to designate a portion of its Parcel as Area of Common Responsibility is subject to Declarant's approval during the Development and Sale Period and, thereafter, the Owners Association's approval.

18.5. Right to Approve Changes in Community Standards

No amendment to or modification of the Village Standard, any Rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant.

18.6. Additional Covenants and Restrictions

No one other than Declarant may record any additional covenants or restrictions affecting any portion of the Community without Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.7. Exclusive Rights to Use Name of Development; Ownership of Marketing Materials

No Person shall use the name "Ward Village," any derivative of such name, any associated graphic elements, or any logo or depiction associated with Ward Village in any printed or promotional material without Declarant's prior written consent. However, Parcel Owners may use the name "Ward Village" in printed or promotional matter where such term is used solely to specify that particular property is located within Ward Village, and the Owners Association shall be entitled to use the words "Ward Village" in its name.

Marketing materials created by Declarant for use in connection with the marketing and sale of Ward Village are the property of Declarant and neither the Owners Association nor any Parcel Owner may use or permit the use of such materials without Declarant's prior written consent.

18.8. Telecommunications Systems

As provided in Section 14.2(c), Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in Ward Village to provide or otherwise provide for Telecommunications Systems. Such right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other community systems services in the region. Declarant also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Declarant and/or the Owners Association shall have the right, without obligation, to erect or permit the erection of an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Ward Village, should any master system or systems be utilized by the Owners Association and require such exterior apparatus.

In addition, Declarant may enter into lease, license, or other agreements with third parties permitting the installation within Ward Village, including on the roofs of structures on Parcels, and operation of Telecommunications Systems-related improvements (*e.g.*, cellular telephone towers), without regard to whether such improvements are designed to serve the Community.

Declarant may enter into and assign to the Owners Association, or cause the Owners Association to enter into, service agreements providing access to any Telecommunications Systems for all Parcels as a Common Expense or for particular Parcels or Sub-Units as a Service Area Expense. Alternatively, if particular services or benefits are provided to particular Parcel Owners or Parcels at their request, the benefited Parcel Owner(s) may be required to pay the service provider directly for such services, or the Owners Association may assess the charges as a Specific Assessment and pay such charges to the provider on behalf of the Parcel Owners, as the Board deems appropriate.

Notwithstanding the above, there is no guarantee or representation that any particular Telecommunications Systems will be made available.

18.9. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or other Improvements within Ward Village in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant is first notified in writing and given an opportunity to meet with the owner of the property to discuss the Parcel Owner's concerns and conduct its own inspection.

18.10. Access for Development and Operational Purposes.

Declarant, Declarant Affiliates, and their respective employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Area of Common Responsibility, including roadways within Ward Village, for the purpose of:

- (a) exercising any rights reserved to Declarant and Declarant Affiliates pursuant to this Community Covenant, including the rights set forth in Section 18.1; and
- (b) making, constructing, and installing any Improvements indicated on Plats of Ward Village and such other Improvements to Ward Village and to the Additional Property as it deems appropriate.

18.11. Right to Use Area of Common Responsibility for Special Events

Declarant may use the Area of Common Responsibility to sponsor special events for charitable, philanthropic, political, or marketing purposes (and may, for such purposes, close streets and sidewalks within Ward Village), subject to the following conditions:

- (a) the availability of the facilities at the time requested;

(b) Declarant shall be responsible for payment of all costs and expenses incurred and shall indemnify the Owners Association against any loss or damage resulting from the special event; and

(c) the facilities and personal property used in conjunction with the special event shall be returned to the Owners Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Area of Common Responsibility for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Community Covenant.

18.12. Right to Transfer or Assign Declarant's Rights

Any or all of Declarant's special rights and obligations set forth in this Community Covenant or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Community Covenant or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument Declarant and the transferee or assignee signs. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Community Covenant where Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

18.13. Termination of Rights

Any and all of the rights reserved to Declarant and Declarant Affiliates under this Community Covenant may be exercised with respect to different portions of Ward Village at different times. If a right is exercised with respect to any portion of Ward Village, it need not be exercised with respect to all or any other portion of Ward Village. No assurances are made as to the boundaries of any property as to which Declarant or Declarant Affiliates may exercise such rights, or as to the order in which different portions of Ward Village may be subjected to the exercise of such rights.

Except as otherwise specified, the rights reserved to Declarant and Declarant Affiliates shall terminate on the earlier of: (a) termination of the Development and Sale Period; or (b) Declarant's recording of a written statement that development rights are terminated.

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

Chapter 19

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between owners or between Parcel Owners and the Owners Association, Declarant, or others involved with Ward Village. This commits the parties to any such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the membership be-

fore the Owners Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Bound Parties. DECLARANT, DECLARANT AFFILIATES, THE OWNERS ASSOCIATION AND ITS OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS, ALL PERSONS SUBJECT TO THIS COMMUNITY COVENANT, AND ANY PERSON NOT OTHERWISE SUBJECT TO THIS COMMUNITY COVENANT WHO AGREES TO SUBMIT TO THIS CHAPTER (COLLECTIVELY, "BOUND PARTIES"), AGREE THAT IT IS IN THE BEST INTEREST OF ALL CONCERNED TO ENCOURAGE THE AMICABLE RESOLUTION OF DISPUTES INVOLVING WARD VILLAGE WITHOUT THE EMOTIONAL AND FINANCIAL COSTS OF LITIGATION.

ACCORDINGLY, A BOUND PARTY MAY NOT FILE SUIT IN ANY COURT WITH RESPECT TO A CLAIM DESCRIBED IN SUBSECTION (B), UNLESS AND UNTIL IT HAS FIRST SUBMITTED SUCH CLAIM TO THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 19.2 AND MADE A GOOD FAITH EFFORT TO RESOLVE SUCH CLAIM.

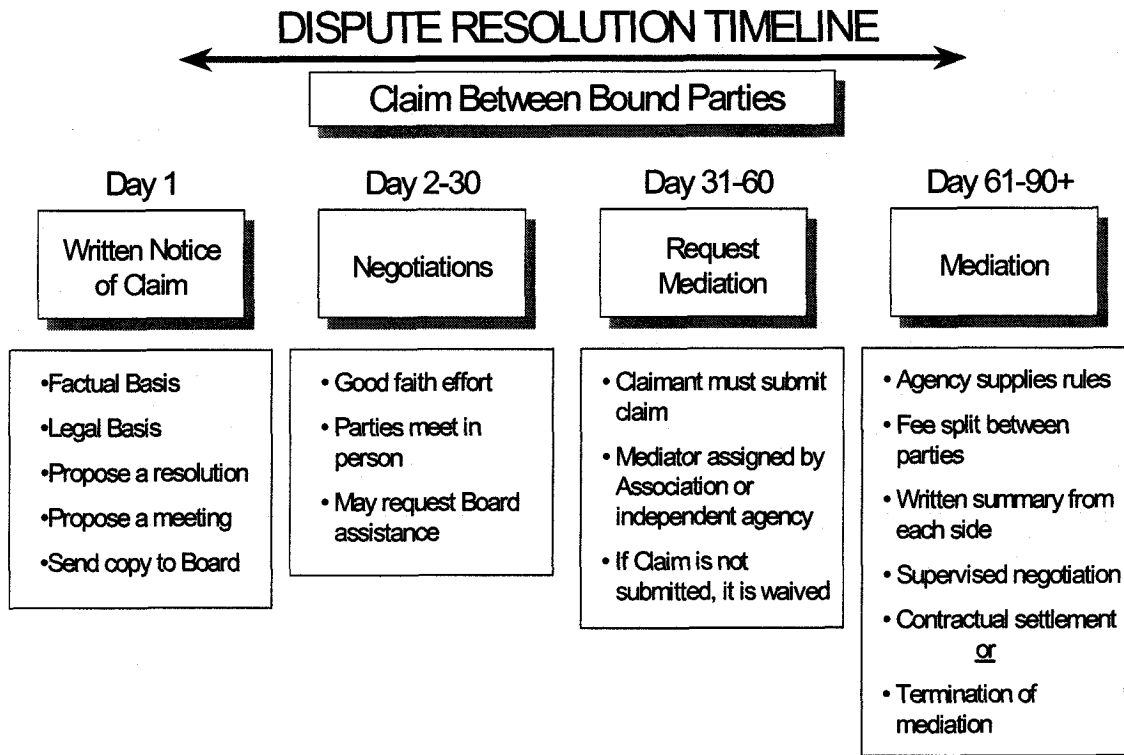
(b) Claims. As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within Ward Village, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

- (i) any suit by the Owners Association to collect assessments or other amounts due from any Parcel Owner;
- (ii) any suit by the Owners Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Owners Association's ability to enforce the provisions of Part Two of this Community Covenant (relating to creation and maintenance of community standards);
- (iii) any suit that does not include Declarant, a Declarant Affiliate, or the Owners Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2; and



(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter.

19.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Owners Association (if the Owners Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Honolulu, Hawaii area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

19.3. Initiation of Litigation by Owners Association

The Owners Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period with Declarant's approval;
- (b) initiated to enforce the provisions of this Community Covenant, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Owners Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by Declarant, during the Development and Sale Period, and by the same percentage of votes necessary to institute proceedings.

Chapter 20

Changes in the Common Area

Those portions of the Area of Common Responsibility that the Owners Association owns are subject to change. This Chapter explains the procedures for partition of the Common Area, condemnation of the Common Area, and the general transfer or dedication of the Common Area.

20.1. Assignment and Reassignment of Limited Benefit Area

(a) **Assignment.** Declarant may designate Limited Benefit Area as provided in Section 3.1. In addition, the Board may designate any portion of the Area of Common Responsibility as Limited Benefit Area upon approval of the Board and Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association, including Parcel Owners and/or Sub-Unit Owners of a majority of the Residential Votes and at least a majority of the Non-Residential Votes allocated to the Parcels and/or Sub-Units to which the Board proposes to assign such Limited Benefit Area. No such assignment shall have the effect of denying any Owner access to such Owner's Parcel or Sub-Unit without such Owner's consent. During the Development and Sale Period, any such assignment shall also require Declarant's written consent.

(b) **Reassignment.** Limited Benefit Areas, once assigned, may be reassigned only with the consent of the Owners of the Parcels and Sub-Units (if Sub-Units, rather than the entire Parcel, are assigned a Limited Benefit Area) affected by such reassignment.

(c) **Use by Others.** Upon approval of a majority of the Residential Votes and a majority of the Non-Residential Votes allocated to Parcel Owners of Parcels to which any Limited Benefit Area is assigned, the Owners Association may permit occupants of other Parcels to use all or a portion of such Limited Benefit Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Benefit Area.

20.2. Condemnation



A governmental entity such as a town, county, or state has the power to condemn property for its own uses but generally has to pay the value of the property to do so.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Owners Association in lieu of and under threat of condemnation with such approval as may be required under Section 20.4, each Parcel Owner shall be entitled to written notice of such

taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Owners Association to be used as the Board determines.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Owners Association shall restore or replace such improvements on available remaining portions of the Common Area, unless within 60 days after such taking Declarant, during the Declarant Control Period, and Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 10.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.4.

20.3. Partition



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as otherwise specifically permitted in this Community Covenant, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of such Common Area without the written consent of all Parcel Owners. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Community Covenant, with such approval as may be required under Section 20.4.

20.4. Transfer or Dedication of Common Area

During the Development and Sale Period: (a) Declarant may dedicate roadways within Ward Village and other portions of the Area of Common Responsibility that it or a Declarant Affiliate owns to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity; and (b) the Owners Association, upon Declarant's request and without a vote of the membership, shall dedicate roadways and other Common Areas to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity, as applicable.

The Owners Association also: (aa) may dedicate portions of the Common Area to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity; (bb) may subject the Common Area to a security interest; or (cc) may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Benefit Area, upon the written consent of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association and, during the Development and Sale Period, the written consent of Declarant; or

(b) if Limited Benefit Area, upon written approval of Parcel Owners and/or Sub-Unit Owners representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes assigned to the Parcels to which such Limited Benefit Area is assigned.

Governmental entities responsible for maintaining property within Ward Village are not required to comply with the Village Standard, and, as such, such properties may not be maintained to the same level as properties the Owners Association maintains.

The proceeds from the sale or mortgaging of Common Area shall be an asset of the Owners Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Benefit Area shall be disbursed in the manner approved by the Parcel Owners of Parcels to which the Limited Benefit Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Parcel of rights of access or support.

Chapter 21

Termination and Amendment of Community Covenant

This Chapter sets out procedures by which Declarant, the Board, or the Parcel Owners may amend this Community Covenant to address changes in the plans, needs, or desires of Ward Village.

21.1. Term and Termination

This Community Covenant is intended to be of perpetual duration, unless Parcel Owners representing 80% of the total votes in the Owners Association (including Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes) and Declarant (during the Development and Sale Period) direct the Board to execute and record a document stating that this Community Covenant is terminated. In such case, this Community Covenant shall terminate on the date specified in the termination document.

Notwithstanding the above, if any interest created by this Community Covenant would be unlawful, void, or voidable by reason of the rule against perpetuities or any other rule restricting the period of time that covenants can affect title to property, such interest shall expire 90 years from the date of recording of this Community Covenant.

This Section shall not permit termination of any easement created in this Community Covenant for the benefit of Declarant without the consent of Declarant. This Section shall not permit termination of any easement created by or pursuant to Section 14.4 of this Community Covenant without the consent of the utility or service provider holding such easement. Other easements created in this Community Covenant shall continue in effect following termination of this Community Covenant unless the recorded document memorializing the termination of this Community Covenant otherwise specifically provides that the easement is terminated.

21.2. Amendment

(a) **By Declarant.** Declarant may unilaterally amend this Community Covenant for any purpose during the Declarant Control Period, subject to any limitations imposed by Hawaii law.

(b) **By Declarant or the Board.** Following the Declarant Control Period, Declarant, acting unilaterally, or the Board, without a vote of the Parcel Owners, may amend this Community Covenant or any Supplement to:

(i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination;

(ii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels or Sub-Units;

(iii) to satisfy the requirements of any local, state, or federal governmental agency; or

(iv) to clarify or correct technical, typographical, or scrivener's errors.

However, no amendment under this paragraph that would adversely affect the title to any Parcel shall be binding upon such Parcel unless the Parcel Owner shall consent in writing.

(c) **By Owners.** Except as otherwise specifically provided above and elsewhere in this Community Covenant, this Community Covenant may be amended only by the affirmative vote or written consent, or any combination thereof, of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

If the percentage of votes necessary to amend a specific clause is not specified, the percentage of votes required for action shall be 67%.

(d) **Validity and Effective Date.** During the Development and Sale Period, Declarant's written consent shall be required for any amendment to this Community Covenant. In addition, no amendment may remove, terminate, revoke, or modify any right or privilege of Declarant or any Declarant Affiliate, or the benefit of any reserved right, without the written consent of Declarant (or the assignee of such right or privilege).

If a Parcel Owner consents to any amendment to this Community Covenant or the By-Laws, it will be conclusively presumed that such Parcel Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Parcel Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recording or it shall be presumed that such amendment was validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Community Covenant.

(e) *Exhibits.* Exhibits "A," "B," and "D" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this Section. Exhibit "E" is attached for informational purposes and may be amended as provided in that exhibit or in the provisions of this Community Covenant that refer to such exhibit.

[Signatures set forth on the following page]

THIS COMMUNITY COVENANT FOR WARD VILLAGE is made and executed by the undersigned Declarant this 13th day of September, 2013.

DECLARANT:

VICTORIA WARD, LIMITED,
a Delaware corporation

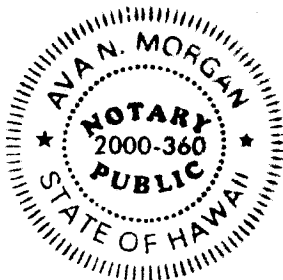
By: [Signature]
Name: David M. Striph
Its: Vice President

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 13th day of September, 2013, before me appeared David M. Striph, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



(Official Stamp or Seal)

[Signature]

Print Name: Ava N. Morgan
Notary Public, in and for said State

My commission expires: 07/23/2016

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **COMMUNITY COVENANT FOR WARD VILLAGE**

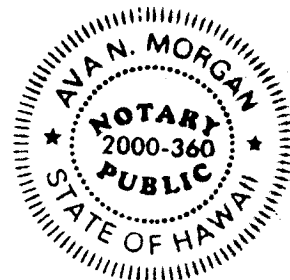
Document Date: _____ or ☒ Undated at time of notarization

No. of Pages: 116 Jurisdiction: First Circuit
(in which notarial act is performed)

[Signature]
Signature of Notary

09/13/2013
Date of Notarization and
Certification Statement

Ava N. Morgan
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT "A"

Land Initially Submitted

Block C

-ITEM I (Tax Key: (1) 2-3-001-001):-

-PARCEL FIRST:-

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 630,559, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240644, described as follows:

LOT 33, BLOCK 1, area 25,000 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 53 of Victoria Ward, Limited, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

-PARCEL SECOND:-

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 686,614, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240651, described as follows:

LOT 6, area 24,287 square feet, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 53 of Victoria Ward, Limited, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

-PARCEL THIRD:-

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 686,614, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240651, described as follows:

LOT 8, area 7,159 square feet, more or less, as shown on Map 20, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 53 of Victoria Ward, Limited, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

-ITEM II (Tax Key: (1) 2-3-001-004):-

All of that certain parcel of land situate at Kaakaukui, Kewalo and Kukuluaeo, Honolulu, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 630,559, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240644, described as follows:

LOT 32, BLOCK 1, area 25,000 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 53 of Victoria Ward, Limited, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

Block K

All of that certain parcel of land situate, lying and being at Kukuluao, City and County of Honolulu, State of Hawaii, being LOT 15, same being consolidation of Lots 1, 2, and 3 (Map 2) of Land Court Consolidation No. 53, Block 5, deregistered, and a portion of Lot 1 of Department of Planning and Permitting Subdivision No. 2008/SUB-61, being previously Lot 14 (Map 6) and a portion of Lot 4 (Map 2) of Land Court Consolidation No. 53, Block 5, deregistered, and a portion of Lot 2 (Map 18) of Land Court Consolidation No. 53, deregistered.

-Note:- (A Lots 1, 2, 3, and 4 (Map 2) and Lot 14 (Map 6) of Land Court Consolidation No. 53, Block 5, being described in deregistered Transfer Certificate of Title No. 630,559, have been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261 and instrument recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240644.

(B) Lot 2 (Map 18) of Land Court Consolidation No. 53, being described in deregistered Transfer Certificate of Title No. 635,289, has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261 and instrument recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240648.

Said LOT 15 is shown on survey map prepared by Gary S. Takamoto, Land Surveyor, with ControlPoint Surveying, Inc., approved by the Department of Planning and Permitting, City and County of Honolulu, 2013/SUB-58, on August 23, 2013, and is more particularly described as follows:

Beginning at the east corner of this parcel of land, being also the northwest corner of Lot 16 and on the south side of Queen Street Extension, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,616.62 feet south and 781.43 feet west and running by azimuths measured clockwise from true South:

1. 51° 52' 221.19 feet along Lot 16 and 17, the remainder of R.P. 1944 to E.W. Clark on L.C.Aw. 387 to the American Board of Commissioners for Foreign Missions;

2. 41° 46' 187.12 feet along Lot 17, the remainder of R.P. 1944 to E.W. Clark on L.C.Aw. 387 to the American Board of Commissioners for Foreign Missions;

3. Thence along the north side of Auahi Street, on a curve to the right with a radius of 1024.63 feet, the chord azimuth and distance being:

117° 17' 46.5" 1.97 feet;

4. Thence along same, on a curve to the right with a radius of 1024.63 feet, the chord azimuth and distance being:

118° 11' 24.5" 30.00 feet;

5. Thence along same, on a curve to the right with a radius of 1024.63 feet, the chord azimuth and distance being:

119° 38' 58" 22.19 feet;

6. Thence along same, on a curve to the right with a radius of 1024.63 feet, the chord azimuth and distance being:

120° 49' 45" 20.00 feet;

7. Thence along same, on a curve to the right with a radius of 1024.63 feet, the chord azimuth and distance being:

122° 09' 09" 27.33 feet;

8. 122° 55' 88.85 feet along same;

9. Thence along the northeast intersection of Auahi Street and Kamakee Street, on a curve to the right with a radius of 40.00 feet, the chord azimuth and distance being:

177° 23' 30" 65.11 feet;

10. 231° 52' 385.36 feet along the east side of Kamakee Street;

11. Thence along the south intersection of Kamakee Street and Queen Street Extension, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

276° 52' 42.43 feet;

12. 321° 52' 37.33 feet along the south side of Queen Street Extension;

13. Thence along same, on a curve to the left with a radius of 468.00 feet, the chord azimuth and distance being:

318° 41' 42.5" 51.78 feet;

14. Thence along same, on a curve to the left with a radius of 468.00 feet, the chord azimuth and distance being:

313° 19' 10" 36.00 feet;

15. Thence along same, on a curve to the left with a radius of 468.00 feet, the chord azimuth and distance being:

309° 46' 58.5" 21.76 feet;

16. Thence along same, on a curve to the left with a radius of 468.00 feet, the chord azimuth and distance being:

307° 01' 34" 23.27 feet, to the point of beginning and containing an area of 89,882 square feet, more or less.

EXHIBIT "B"

Additional Property

Any and all property lying and being in the City and County of Honolulu, Hawaii, that is within one mile of any boundary of the property comprising Ward Village, as may be expanded from time to time.

Note to clerk and title examiners:

This Community Covenant is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner of the applicable property by filing a Supplement in accordance with Chapter 17.

EXHIBIT "C"

Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance. It is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove actions or items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the Governing Documents. As such, while something may be approved or permitted under one set of circumstances, the same thing may be disapproved under a different set of circumstances. Exercising discretion in approvals or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any circumstances it deems appropriate.

The following shall apply to all of Ward Village until such time as modified pursuant to this Community Covenant.

1. **General.** Ward Village shall be used only for purposes consistent with the Master Plan, this Community Covenant, and any Supplement.

2. **Restricted Activities.** *Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Ward Village:*

(a) Parking any vehicles in designated "no parking" areas, or parking of mobile homes, recreational vehicles, boats and other watercraft, and trailers in areas other than those designated for such purposes; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to any Parcel or the Common Area and temporary marketing and construction trailers are permitted in areas Declarant or the Board designates. Keeping stored or inoperable vehicles anywhere within Ward Village is prohibited, except that vehicles may be stored in assigned parking spaces in residential developments;

(b) Raising, breeding, or keeping animals, except that a reasonable number of dogs, cats, or other usual and common household pets may be kept in a residential dwelling. Animals brought into Ward Village shall be kept on a leash or otherwise confined in a manner acceptable to the Board. Any animal which is permitted to roam free, or, in the Board's sole discretion, makes objectionable noise, endangers the health or safety of any individual or other animal, or constitutes an unreasonable annoyance or inconvenience shall be removed upon the Board's request. If the animal's owner fails to honor such request, the Board may remove or provide for the removal of the animal from Ward Village;

(c) Any activity that emits foul or obnoxious odors or creates excessive noise or other conditions that tend to disturb the peace or threaten the safety of others, each as determined in the Board's reasonable discretion;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures;

(f) Any noxious or offensive activity which in Declarant's or the Board's reasonable determination tends to cause embarrassment, discomfort, or annoyance to other persons within Ward Village;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of permitted construction;

(h) Use and discharge of firecrackers and other fireworks, except that the Owners Association may sponsor or otherwise permit structured and supervised fireworks displays from time to time;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored for emergency purposes and for the operation maintenance vehicles, generators, and similar equipment;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Ward Village or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution; and

(m) Any modification of any thing, permanently or temporarily, on any Parcel, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, fences of any kind, and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Parcels, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property.

(n) Hanging garments, towels, laundry, signs, or other objects from, and the accumulation or excessive storage of items on, balconies.

EXHIBIT "D"

Allocating Liability for Assessments and Allocating Votes Among Parcels

1. **Assignment of Equivalent Units.** For purposes of allocating Common Expenses and Service Area Expenses, and for purposes of allocating votes in the Owners Association among Parcels, each Parcel shall be assigned Equivalent Units. The number of Equivalent Units for each Parcel is determined in accordance with the table set forth below based upon the size of the Parcel and the land use classifications within the Parcel, including all uses within the Parcel, as determined by actual uses.

Land Use Classification*	Equivalent Units*
Undeveloped Parcels	5 per acre of land (rounded up or down to the nearest acre) **
Retail and service establishments, including, without limitation, restaurants, banks (including ATM's) and other financial services and institutions	1 per 500 square feet of gross floor area***
General Office (intended for use by Parcel Owner or lease to third parties for commercial purposes; not including common element office space controlled by a Parcel Association and used for management or administrative purposes in connection with such Parcel Association)	1 per 1000 square feet of gross floor area
Improved, for-sale residential units (including all improved single family attached, detached, and condominium units which may be individually conveyed)	1 per improved residential unit
Multi-family rental apartments	.5 per apartment dwelling unit
Other uses	****

* Allocations for undeveloped Parcels based upon the acreage of the Parcel shall be made at the time a Parcel is submitted to the Community Covenant. Allocations based on actual uses will be allocated to each Parcel upon the earlier of (i) the issuance of a certificate of occupancy for the Improvement containing, or to contain, such use, or (ii) the date upon which the intended use commences. In the case of a change in use, the new allocation shall be made as of the date upon which the new use actually commences. A "certificate of occupancy" is that certificate or approval issued by the City and County of Honolulu or HCDA, as applicable, as a final condition of occupancy or use of an Improvement on a Parcel. During the Development and Sale Period, Declarant may, in the exercise of its reasonable discretion, amend this Exhibit to adjust Equivalent Unit assignments to address inequities.

** Allocations based on Parcel acreage shall apply only prior to the construction of Improvements on the Parcel. Following the construction of Improvements, allocations shall be based on gross floor area or number of lots or units, as applicable.

*** "Gross floor area" shall be the conditioned space within an enclosed structure intended for occupancy or other use, as determined by a licensed engineer or architect. Unless otherwise provided by Declarant, "gross floor area" shall be determined in accordance with BOMA standards. For calculation purposes, square footages shall be rounded up or down to the nearest multiple of 250 (subject to a minimum square footage, after rounding, of 250 square feet).

**** During the Development and Sale Period, Declarant unilaterally may amend this Exhibit to create additional Land Use Classifications and to assign Equivalent Units to such new use.

Declarant shall make all determinations of land use classification during the Development and Sale Period. Thereafter, the Board shall determine land use classifications. The land use classification of a Parcel or any portion of a Parcel hereunder shall not be changed once established unless there has been a change in predominant use.

2. **Calculation of Assessments.** The share of any Common Expenses to be assessed by the Owners Association against a Parcel shall be represented by a fraction, the numerator of which is the number of Equivalent Units assigned to the particular Parcel and the denominator of which is the total number of Equivalent Units assigned to all Parcels subject to such assessment. Such fraction shall be multiplied by the total dollar amount of the Common Expense budget assigned to all Parcels in order to determine the dollar amount of the assessment to be levied against the particular Parcel. The formula is illustrated as follows (The result, "A," being the assessment to be assigned, in dollars, to the particular Parcel.):

$$\frac{\text{EU's Assigned to a Particular Parcel}}{\text{Total EU's Assigned to All Parcels}} \times \text{Budget (\$)} = A$$

3. **Calculation of Votes.** Each Parcel shall be allocated the number of votes corresponding to the number of Equivalent Units within the Parcel.

4. **Computation by Board.** The land use classification and number of Equivalent Units assigned to each Parcel, and the share of assessments (stated as a percentage) to be levied on each Parcel subject to assessment, shall be computed at least annually by the Board. If a use within a Parcel changes during the fiscal year, the Board shall be authorized to adjust the assessment against the Parcel effective with such change in use, but the Board need not reallocate assessments against all Parcels to take into account such change until the next annual budget. Notice of the percentages for each Parcel (including a summary of the computations) shall be sent to each Parcel Owner together with the notice of the assessment.

In the event that additional real property is made subject to this Community Covenant during the Owners Association's fiscal year, for computation of Equivalent Units, the Owners Association Board shall recompute assessment percentages and votes for each Parcel and send notice of such recomputed percentages to each Parcel Owner; provided, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

5. **Annual Certification – Equivalent Units, Financial Reports.** The calculation of Equivalent Units shall be certified to on an annual basis by a professional property management agent. An annual report consisting of at least the following shall be made available for Parcel Owners' review within 180 days after the close of each fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

EXHIBIT "E"

By-Laws of Ward Village Owners Association

BY-LAWS
OF
WARD VILLAGE OWNERS ASSOCIATION

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BY-LAWS
OF
WARD VILLAGE OWNERS ASSOCIATION

Article 1
Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Ward Village Owners Association (the "**Owners Association**").

1.2. Principal Office.

The Owners Association's principal office shall be located in the City and County of Honolulu, Hawaii. The Owners Association may have such other offices as the Board may determine or as the Owners Association's affairs require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Community Covenant for Ward Village recorded in the official records of the Bureau of Conveyances of the State of Hawaii (as may be amended and supplemented from time to time, the "**Community Covenant**").

The term "**majority**," as used in these By-Laws, means those votes, Parcel Owners, Sub-Unit Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number. The term "**Owner**," as used in these By-Laws, refers collectively to Parcel Owners and/or Sub-Unit Owners entitled to vote on Owners Association matters.

Article 2
Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Owners Association shall have two classes of membership, one class consisting of the Parcel Owners and one class consisting of Declarant and any Declarant Affiliate owning a Parcel, as more fully set forth in the Community Covenant. Provisions of the Community Covenant pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Owners Association shall hold meetings at the Owners Association's principal office or at such other suitable place the Board may designate.

2.3. Owners Association Meetings.

(a) *Initial Meeting.* The first Owners Association meeting, whether a regular or special meeting, shall be held during the first full fiscal year following the Owners Association's incorporation but not later than one year after the closing of the first conveyance of a Parcel or a Sub-Unit to a Person other than a Parcel Developer.

(b) *Annual Meetings.* The Board shall schedule regular annual meetings to occur within 180 days after the close of the Owners Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a written petition of Parcel Owners representing at least 10% of the total votes in the Owners Association, which petition shall state the purpose of the meeting.

(d) *Open Meetings.* Association meetings shall be open to all Parcel Owners and Sub-Unit Owners (collectively, "Owner(s)"). The Board may regulate Owners' participation in discussions at meetings; provided after the Declarant Control Period, at any regular or special meeting, Owners must be given an opportunity to make comments during a designated time. If the meeting agenda is limited to specific topics, Owners' comments may be limited to those topics.

2.4. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Owners shall deliver or cause to be delivered to each Owner entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Community Covenant, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered at least 14 but not more than 60 days before any annual meeting, and at least 10 but not more than 30 days before any special meeting.

If proxies are permitted, the notice shall also state the procedures for appointing proxies. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5. Notice delivered by electronic transmission shall be considered written notice, if authorized pursuant to Section 9.5.

2.5. Waiver of Notice.

Waiver of notice of an Owners Association meeting shall be deemed the equivalent of proper notice. Any Owner may waive, in writing, notice of any Owners Association meeting, either before or after such meeting. An Owner's attendance at a meeting shall be deemed a waiver by such Owner of notice of the time, date, and place thereof, unless the Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6. Adjournment of Meetings.

If any Owners Association meeting cannot be held because a quorum is not present, the Owners representing a majority of the votes present at such meeting may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Owners entitled to vote at such meeting of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Owners to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.7. Voting.

(a) Voting Rights. The voting rights of the Owners shall be as set forth in the Community Covenant and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. Owners may vote in person, by proxy, or by written ballot in accordance with such rules and procedures as the Board may adopt.

(b) Establishment of Election Districts. Declarant shall establish Election Districts, if at all, not later than the date of expiration of the Declarant Control Period by filing with the Owners Association and recording one or more Supplements identifying the Parcels and/or Sub-Units comprising each Election District by use classification, legal description, or other means such that properties or uses comprising the Election District can be determined. Declarant, acting alone, may amend to change such designation at any time prior to the expiration of the Declarant Control Period. After the Declarant Control Period, Declarant may submit additional properties to any Election District.

After termination of the Declarant Control Period, the Board shall have the right to record or amend any Supplement creating Election Districts upon the vote of a majority of the total number of directors and approval of Owners representing a majority of the total votes in the Owners Association.

Until such time as Election Districts are established, all of Ward Village shall constitute a single Election District. After a Supplement establishing Election Districts has been recorded, any and all portions of Ward Village which are not assigned to a specific Election District shall constitute a single Election District.

An instrument recorded for the purpose of designating Election Districts shall not constitute an amendment to the Community Covenant or these By-Laws, and no consent or approval of any Person shall be required except as specifically stated in this Section.

2.8. Proxies.

On any matter to be voted on by the Owners, each Owner entitled to vote may vote in person or by proxy, subject to the limitations of Hawaii law and subject to any specific provision to the contrary in the Community Covenant or these By-Laws. A proxy shall be valid for only a specified meeting of the Owners Association and any adjournments of such meeting.

Every proxy shall be in writing, shall identify the Owners Association, the date of the meeting to which it pertains, the date of the proxy, and the Parcel or Sub-Unit for which it is given. The proxy also shall contain the signature and printed name of the Owner or his duly authorized attorney-in-fact and must be filed with the Owners Association's Secretary no later than 4:30 pm on the second business day prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Owner giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and, unless a shorter period is specified in the proxy or unless otherwise specifically provided under Hawaii law, shall automatically cease upon (a) conveyance of any Parcel or Sub-Unit for which it was given; or (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incapacity of an Owner who is a natural person.

In addition to the above, the form and distribution of proxies shall conform to the requirements set forth in the Hawaii Planned Community Associations Act, Section 421J-4.

2.9. Quorum.

Except as these By-Laws, the Community Covenant, or the Articles of Incorporation may otherwise provide, the presence of Owners representing at least 20% of the total Residential Votes and at least 20% of the total Non-Residential Votes in the Owners Association shall constitute a quorum at all Owners Association meetings.

2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Owners Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Owners Association's books.

2.11. Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Owners may be taken without a meeting, without prior notice, and without a vote if Owners representing at least the minimum number of votes in the Owners Association necessary to authorize such action at a meeting, if all Owners entitled to vote on such matter were present and voted, sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Owners Association. Such consents shall be filed with the Owners Association's minutes and shall have the same force and effect as a vote of the Owners at a meeting.

Article 3
Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Owners Association's affairs. Each director shall have one vote. Directors shall be Parcel Owners or Sub-Unit Owners and no Parcel may have more than one representative (*e.g.*, the Parcel Owner and a Sub-Unit Owner of a Sub-Unit within the Parcel) on the Board at a time except in the case of a Parcel containing Sub-Units with different uses contained within different Election Districts and in the case of directors Declarant appoints.

3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of three directors appointed by Declarant. The initial directors shall serve until their successors are appointed or elected as provided in this Section.

(b) Directors During Declarant Control Period. Except as otherwise provided in this subsection, Declarant may appoint, remove, and replace Board members until termination of the Declarant Control Period. During such period, Owners entitled to vote, other than Declarant, shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owners other than Declarant are referred to as "**Owner Directors**"):

(i) Within 60 days after the time that Persons other than Declarant, a Declarant Affiliate, or a Parcel Developer holds title to one-third of the maximum number of Parcels and Sub-Units permitted by the Master Plan, or whenever Declarant earlier determines, the President shall call for an election by which the Owners entitled to cast Non-Residential Votes shall be entitled to elect one director. The other two directors shall continue to be appointees of Declarant.

The Owner Director elected pursuant to the above paragraph shall be elected for a term of two years or until the happening of the event described in Section 3.3(b)(ii), whichever is shorter. If such director's term expires prior to the happening of the event described in Section 3.3(b)(ii), a successor shall be elected for a like term.

(ii) Within 60 days after the time that Persons other than Declarant, a Declarant Affiliate, or a Parcel Developer holds title to at least 67% of the maximum number of Parcels and Sub-Units permitted by the Master Plan, or whenever Declarant earlier determines, the Board shall be increased to five directors and the President shall call for an election by which Owners entitled to cast Non-Residential Votes shall be entitled to elect one Owner Director and Owners entitled to cast Residential Votes shall be entitled to elect one Owner Director. The other three directors shall continue to be appointees of Declarant.

The Owner Directors elected pursuant to the above paragraph shall be elected for a term of two years or until the happening of the event described in Section 3.3(c)(i), whichever is shorter. If such directors'

terms expire prior to the happening of the event described in Section 3.3(c)(i), successors shall be elected for like terms.

(c) *Directors After Declarant Control Period.*

(i) Not later than termination of the Declarant Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owners entitled to vote shall be entitled to elect six directors, with an equal number of directors elected by Owners representing each Election District and any remaining directorships filled at large by the votes of all Owners entitled to vote, voting at-large. Three directors shall be elected to serve until the second annual meeting following their election and three directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

(ii) Declarant shall be entitled to appoint, remove, and replace the seventh director until termination of Declarant Membership, at which time the director appointed by Declarant shall resign. The remaining directors shall be entitled to appoint a successor to fill such vacancy until the next annual meeting, at which time the Owner entitled to vote, voting at large, shall be entitled to elect a successor who shall be elected for a term of two years.

(iii) Upon expiration of the term of office of each Owner Director, the Owners entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected.

Directors may serve any number of consecutive terms.

3.4. *Nomination and Election Procedures.*

(a) *Nomination of Candidates.* At least 30 days prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by a vote of the Owners.

The Board also may appoint a Nominating Committee to make nominations for election to the Board. The Nominating Committee, if any, shall consist of at least three Persons, including a chairman, who shall be a Board member, and two or more Owners or representatives of Owners.

In preparation for each election, the Nominating Committee, if created, shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owners at such election. The Nominating Committee shall nominate separate slates for the directors to be elected at-large or those to be elected from Election Districts. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Owners and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written ballot cast by mail, facsimile transmission, electronic mail, or at a meeting, as the Board determines, or by any other method permitted by Hawaii law. Each Owner may cast all votes assigned to his or her Parcel or Sub-Unit for each position to be filled from any slate of candidates on which such Owner is entitled to vote. Under no circumstances shall cumulative voting be permitted in any election of directors.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by the vote of the Owners holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Owners, the Owners entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who: (a) has three consecutive unexcused absences from Board meetings; (b) is more than 30 days delinquent (or represents a Parcel or Sub-Unit which is so delinquent) in the payment of any assessment or other charge due the Owners Association; or (c) fails to cure a violation of the Governing Documents pertaining to the Parcel or Sub-Unit he or she represents after being given notice from the Board or its designee and a reasonable opportunity to cure such violation. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to fill such directorship shall elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among eligible Owners, residents, or occupants of Parcels or Sub-Units within the Election District represented by the director who vacated the position.

This Section shall not apply to directors Declarant appoints. Declarant shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, removal, or resignation of a director appointed by Declarant.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 30 days following each annual membership meeting at such time and place as the Board shall fix for the purpose of electing officers and providing for such other organizational functions as deemed appropriate.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least one time during each fiscal year.

3.8. Special Meetings.

The Board shall hold special meetings when called by written notice signed by the President, the Vice President, or any two directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) overnight delivery service (e.g., FedEx), with proof of receipt; (iv) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (v) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission.

(b) All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Owners Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal or overnight delivery, telephone, or other electronic device at least 72 hours before the time set for the meeting.

(c) Notice given by electronic transmission shall be deemed given: (i) if by fax, when directed to a number at which the director has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; (iii) if by posting on an electronic network to an address at which the director has consented to receive notice, upon the posting of such notice; and (iv) if by any other form of electronic transmission, when consented to by the director.

(d) The Board shall give reasonable notice to the Members of the date, time, and place of Board meetings by announcing such information at a previous Board or membership meeting, if practical, and by publishing or posting notice in a manner or location which the Board shall designate where it is reasonably calculated to be available to a majority of the Members. In addition, notice of Board meetings shall be sent by first class mail or electronic transmission to any Member so requesting. At least one copy of any agenda packet furnished to Board members shall be made available at the same time for inspection by the Members.

(e) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (i) a quorum is present; and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors eligible to vote shall constitute a quorum for the transaction of business, and the votes of a majority of such directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Hawaii law, these By-Laws, or the Community Covenant specifically provide otherwise.

A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present and eligible to vote may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Owners Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Owners or their representatives. The Board shall set aside a period of time during each meeting to allow Owners an opportunity to comment on matters relating to the Owners Association, which matters may be limited to items on the agenda for any meeting with a limited agenda. The Board may adopt reasonable rules for such comment period, including limits on the time that any individual may speak and rules requiring Owners who wish to speak to register prior to the meeting. Other than during such comment period, only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Upon approval of a majority of a quorum of the Board, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to the extent permitted by Hawaii law. Notwithstanding the above, the Board may adjourn and reconvene in executive session to discuss and vote upon matters concerning personnel or litigation in which the Owners Association is or may become involved, as may be necessary to protect the attorney-client privilege of the Owners Association, and as may be necessary to protect the interests of the Owners Association while negotiating contracts, leases, and other commercial transactions.

3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by the number of directors with voting rights that would be required to approve the same action at a Board meeting at which all of the directors were present. Such consent shall have the same force and effect as a vote at a meeting. The Board shall promptly notify all directors of any action so approved and the effective date of such action and provide each director with a copy of the signed written consent.

C. Powers and Duties.

3.15. Powers.

The Board shall have the power to administer the Owners Association's affairs, perform the Owners Association's responsibilities, and exercise the Owners Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Owners Association's behalf all acts and things except those which the Governing Documents or Hawaii law require to be done and exercised by the membership.

3.16. Duties.

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Community Covenant, an annual budget establishing each Parcel Owner's share of the Common Expenses and any Service Area Expenses;

(b) levying and collecting such assessments from the Parcel Owners and other Persons responsible for paying shared expenses pursuant to any agreement or recorded covenant;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Village Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Owners Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) opening bank accounts on the Owners Association's behalf and designating the signatories required;

(f) depositing all funds received on the Owners Association's behalf in a bank depository which it shall approve and using such funds to operate the Owners Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Area of Common Responsibility in accordance with the Governing Documents;

(h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Parcel Owners or other parties concerning the Owners Association; however, the Owners Association's obligation in this regard shall be conditioned in the manner provided in the Community Covenant;

(i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Community Covenant, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Owners Association;

(k) keeping a detailed accounting of the Owners Association's receipts and expenditures;

(l) making available to any prospective purchaser of a Parcel or Sub-Unit, any Parcel Owner, any Sub-Unit Owner, and the holders, insurers, and guarantors of any Mortgage on any Parcel or Sub-Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Owners Association as provided in Section 9.4; and

(m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Owners Association to the extent such indemnity is required by Hawaii law, the Articles and these By-Laws.

3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, which approval shall not unreasonably be withheld, no Owner Director may transact business with the Owners Association or any Owners Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by Declarant may be employed by or otherwise transact business with Declarant or a Declarant Affiliate, and Declarant may transact business with the Owners Association or its contractors.

Article 4 Officers

4.1. Officers.

The Owners Association's officers shall include a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Owners Association's officers at the organizational Board meeting following each annual meeting of the Owners, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Owners Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Owners Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose as long as such duties are not inconsistent with these By-Laws.

(a) President. The President shall be the Owners Association's chief executive officer. The President: (i) presides at all meetings of the Owners Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of President of a corporation organized under the laws of the State of Hawaii; (iii) has general supervision, direction, and control of the business of the Owners Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect.

(b) Secretary. The Secretary: (i) keeps the minutes of all meetings of the Board and of the Owners Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Owners for the mailing of notices; and (iv) in general, performs all duties incident to the office of secretary.

(c) Treasurer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Community Covenant and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Treasurer (i) is responsible for Owners Association funds; (ii) keeps full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepares all required financial data and tax returns; (iv) deposits all monies or other valuable effects in the name of the Owners Association in depositories as may from time to time be designated by the Board; (v) prepares the annual and supplemental budgets of the Owners Association; (vi) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all duties incident to the office of Treasurer.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 5 Committees

5.1. General.

In addition to those committees provided for in the Community Covenant, the Board may, in the manner provided in the Hawaii Planned Community Associations Act, appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three but no more than seven Persons. Acting

in accordance with the provisions of the Community Covenant, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Owners Association and shall conduct all hearings held pursuant to Article 8 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees.

Those Persons within a Service Area who are entitled to vote on Service Area matters may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Owners Association provide to the Service Area, over and above those services which the Owners Association provides to all Parcels in Ward Village. A Service Area Committee, if elected, shall consist of no more than three representatives of the property within the Service Area.

The election of a Service Area Committee may be held by written ballot sent to all Parcel Owners and Sub-Unit Owners entitled to vote on matters relating to the Service Area, or at a meeting of all such Persons within the Service Area, as the Board determines. The Board or any Person entitled to vote on matters relating to the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an ex officio member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Parcels in the Service Area and their representatives.

Article 6

Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Hawaii law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. Directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Hawaii law.

6.2. Liability.

(a) A director or officer shall not be personally liable to the Owners Association, any Parcel Owner, any Sub-Unit Owner, or any other Person for any action taken or not taken in such capacity if the director or officer has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which he or she reasonably believes are necessary for the Owners Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he or she has a conflict of interest (beyond that which a director may have by virtue of ownership or occupancy of property within Ward Village); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Owners Association's affairs.

(c) The Owners Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Owners Association's behalf (except to the extent that such officers or directors may also be owners of property within Ward Village).

6.3. Indemnification.

Subject to the limitations of Hawaii law, the Owners Association shall indemnify, defend, and hold harmless every officer, director, and committee member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Owners Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Owners Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Hawaii law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Owners Association;

- (ii) intentional misconduct or knowing violation of the law;
- (iii) an unlawful distribution to members, directors or officers; or
- (iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Owners Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth by Hawaii law, the Board may authorize the Owners Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Owners Association.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Hawaii corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose.

The Board also may provide, or provide for, Owner education designed to foster a better understanding of Ward Village's governance and operations, and leadership training classes designed to educate Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

The Board may maintain, as a Common Expense, membership for the Owners Association, its officers and directors, in the Community Associations Institute or similar organizations that provide educational opportunities for community associations.

Article 7 Management and Accounting

7.1. Compensation of Directors and Officers.

The Owners Association shall not compensate directors and officers for acting as such unless Parcel Owners representing a majority of the total votes in the Owners Association approve such compensation at an Owners Association meeting. The Owners Association may reimburse any director or officer for expenses he or she incurs on the Owners Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Owners Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the

Owners Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Owners Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Declarant to Disapprove Actions.

So long as there is a Declarant Membership, Declarant, on behalf of the Declarant Membership, shall have a right to disapprove any action, policy, or program of the Owners Association, the Board and any committee which, in Declarant's sole judgment, would tend to (i) impair rights of Declarant, Declarant Affiliates, or Parcel Developers under the Community Covenant or these By-Laws; (ii) interfere with development or construction of any portion of Ward Village; (iii) reduce, lower, or otherwise diminish the Village Standard; or (iv) diminish the level of services the Owners Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) Notice. The Owners Association shall give Declarant written notice of all meetings of the membership, the Board, and committees and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Owners Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address Declarant has registered with the Owners Association. Such notice shall comply as to Board meetings with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. At any such meeting, the Owners Association shall give Declarant Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. Declarant, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

Declarant, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

Declarant may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Owners Association. Declarant shall not use its right to disapprove to reduce the level of services the Owners Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Owners Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ Declarant or any Declarant Affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Owners Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Owners Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Owners Association.

7.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

- (i) accounting and controls should conform to generally accepted accounting principles; and
- (ii) the Owners Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the first quarter following the year in which the first Parcel is sold and closed to a Person other than a Declarant Affiliate, financial reports shall be prepared for the Owners Association at least semi-annually (*i.e.*, at the end of the first and second six months of the fiscal year) containing:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for review by Owners within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

7.5. Borrowing.

The Owners Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Parcel Owner approval in the same manner provided in the Community Covenant for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous

12-month period, exceeds or would exceed 20% of the Owners Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract.

The Owners Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, within and outside of Ward Village.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Owners Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article 8 Enforcement Procedures

The Owners Association shall have the power, as provided in the Community Covenant, to impose sanctions for any violation of the Governing Documents. To the extent notice and an opportunity for a hearing is required by the Community Covenant, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing: (a) the nature of the alleged violation; (b) the sanction being imposed or proposed to be imposed; (c) that the alleged violator shall have 10 days to present a written request for a hearing to the Board or the Covenants Committee (if one has been appointed pursuant to Article 5); and (d) that the sanction is being imposed as provided in the notice or that a proposed sanction may be imposed unless a hearing is requested within 10 days of the notice.

If the alleged violator cures the alleged violation and notifies the Board as such in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing. Written notice of the decision shall be mailed to the violator within seven days after the hearing.

If the notice states that a sanction is being imposed immediately or if a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.2. Hearing.

If a hearing is requested within the allotted 10-day period, the Board shall set a date for the hearing and give the alleged violator at least 14 days' notice of the date, time, and location thereof by registered or certified mail, return receipt requested. The hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the Board's or Committee's decision) and the sanction, if any, to be imposed.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Owners Association's manager, President, or Secretary within 10 days after the hearing date.

Article 9 Miscellaneous

9.1. Fiscal Year.

The Owners Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (then current edition) shall govern the conduct of Owners Association proceedings when not in conflict with Hawaii law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of Hawaii law, the Articles of Incorporation, the Community Covenant, and these By-Laws, the provisions of Hawaii law, the Community Covenant, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) Turnover of Books and Records. No later than termination of the Declarant Control Period, Declarant shall deliver to the Owners Association all property, books and records of the Owners Association in Declarant's possession.

(b) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Parcel, any Parcel Owner, any Sub-Unit Owner entitled to vote on Owners Association matters, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Parcel: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Parcel Owners, the Board, and committees. The Board shall provide for such inspection to take place at

the Owners Association's office, the office of its managing agent, or at such other place within Ward Village as the Board shall designate within five days after receipt of a written request identifying the purpose for the request and the specific books and records requested.

(c) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) the frequency and manner of inspection;
- (ii) the hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(d) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Owners Association books, records, and documents and the physical properties owned or controlled by the Owners Association. A director's right of inspection includes the right to make a copy of relevant documents at the Owners Association's expense.

9.5. Notices.

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Community Covenant or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Community Covenant or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

In the event notice is delivered via electronic transmission, the form of electronic transmission shall be consented to and designated by the Owner to whom the notice is given. Any such consent shall be revocable by the Owner upon written notice to the Owners Association and shall be deemed revoked if: (i) the Owners Association is unable to deliver by electronic submission two consecutive notices given by the Owners Association in accordance with such consent, and (ii) such inability becomes known to the Secretary or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Parcel Owner or Sub-Unit Owner, at the address, telephone facsimile number, or e-mail address which the Parcel or Sub-Unit Owner has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Parcel or Sub-Unit of such Owner;

(ii) if to a Parcel Association, the Parcel Association's board of directors, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Parcel Association or its managing agent, or at such other address as the Parcel Association shall designate by notice in writing to the Owners Association pursuant to this Section;

(iii) if to the Owners Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Owners Association or its managing agent, or at such other address as the Owners Association shall designate by notice in writing to the Parcel Owners pursuant to this Section; or

(iv) if to Declarant, at Declarant's principal address as it appears on the Secretary of State's records, or at such other address as Declarant shall designate by notice in writing to the Owners Association pursuant to this Section.

(c) **Effective Date.** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) **By Declarant.** Until termination of the Declarant Control Period, Declarant may unilaterally amend these By-Laws for any purpose, subject to any limitations imposed by Hawaii law.

(b) **By the Board.** The Board may unilaterally amend these By-Laws at any time: (i) to correct clerical, typographical or technical errors; (ii) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels; (iv) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (v) to satisfy the requirements of any local, state, or federal governmental agency; or (vi) as necessary to clarify or correct technical, typographical, or scrivener's errors. However, no amendment under this paragraph that would materially adversely affect the title to any Parcel shall be binding upon such Parcel unless the Parcel's Owner shall consent in writing.

(c) **By the Owners.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential votes in the Owners Association. In addition, during the Declarant Control Period, any such amendment shall also require Declarant's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) **Validity and Effective Date of Amendments.** Any amendment adopted by the Board or pursuant to the vote or consent of the Owners shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Owners Association certifying that the requisite approval was obtained. Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its

recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or Declarant Member without the written consent of Declarant, Declarant Member, or the assignee of such right or privilege.