

**Princeville at Hanalei Community Association**  
**Protective Covenants**  
**Charter of Incorporation**  
**By-Laws**

**Princeville at Hanalei Community Association**  
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**PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION**  
**PROTECTIVE COVENANTS**

**Declaration of Restrictions, Covenants and Conditions**

As Recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7444, Page 93.

This Declaration, made this 1st day of March 1971, by **Eagle County Development Corporation**, a Colorado corporation authorized to do business in the State of Hawaii, whose principal place of business and post office address is 1860 Lincoln Street, Denver, Colorado, hereinafter re-

ferred to as the "Declarant". [Note: In May 1973 Eagle County Development Corporation changed its name to Princeville Corporation. ]

Declarant is the owner of land in Hanalei, County of Kauai, State of Hawaii, described in Exhibit "A" attached hereto and made a part hereof. Declarant intends to develop the land with residences, apartments, hotels, parks, open areas and a variety of uses by means of a planned community development, and the purpose of this declaration is to create and keep the community area desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to guard against unnecessary interference with the natural beauty of the community area; for all the mutual benefit and protection of owners within the community area.

Declarant hereby declares that all land described in Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Princeville at Hanalei Restrictions, meaning the limitations, restrictions, covenants and conditions set forth in this declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the land. These limitations, restrictions, covenants and conditions shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land.

## **Article I Definitions**

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

- a. "Architect" shall mean a person registered to practice architecture in the State of Hawaii.
- b. "Association" shall mean the Princeville at Hanalei Community Association, a nonprofit corporation, and its successors and assigns.
- c. "Board" shall mean the board of directors of the Association.
- d. "By-Laws" shall mean the by-laws of the Association.
- e. "Charter" shall mean the charter of incorporation of the Association granted or to be granted pursuant to Chapter 416, Hawaii Revised Statutes.
- f. "Common Area" shall mean all land and interest therein which has or may be conveyed to the Association.

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- g. "Declarant" shall mean Eagle County Development Corporation, or such other person or corporation whom Eagle County Development Corporation may by a recorded document designate as the Declarant.
- h. "District of Hanalei" shall mean all of that portion of the County of Kauai lying between Kealaakaiole and Puanaaiea Point.
- i. "Lot" shall mean any lot described in Exhibit "A" and any lot hereafter annexed and classified for residential use, or, with respect to any condominium, an apartment of such condominium, or with respect to any apartment house, duplex, or multiple dwelling, a complete residential unit, or with respect to a hotel, a hotel accommodation room.
- j. "Princeville at Hanalei" shall include all land described in Exhibit "A", together with such other land as may be annexed.

k. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to or leasehold interest in any land which is a part of Princeville at Hanalei, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

## **Article II Land Subject to this Declaration**

**Section 1.** The land described in Exhibit "A" attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this declaration.

**Section 2.** The Declarant may, pursuant to the following provisions of this section, from time to time and in its sole discretion, annex to Princeville at Hanalei all or any part of the land (not then constituting a part of Princeville at Hanalei) owned by it at the time of such an annexation located in the District of Hanalei.

a. The annexation of such land shall be effected by Declarant having recorded a declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Princeville at Hanalei Restrictions.

b. Upon annexation becoming effective, the land covered by such annexation shall become a part of Princeville at Hanalei.

c. The declaration described in Section 2.a. above may provide for any of the following:

(1) The same land classifications as are provided for in Article III, or such new land classifications not then provided for in Article III, and such limitations, restrictions, covenants and conditions with respect to use as Declarant may deem to be appropriate for the development of such land;

(2) A declaration of restrictions applicable exclusively to a specified area.

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d. No land, except that described in Exhibit "A" and except that specifically annexed as above provided shall be deemed subject to the Princeville at Hanalei Restrictions, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject to the Princeville at Hanalei Restrictions any land it may now own or hereafter acquire other than that described in Exhibit "A" or an amendment thereto.

## **Article III Land Classification and Restrictive Covenants**

**Section 1.** All lots within Princeville at Hanalei shall be classified into the following uses:

a. **Single family residential lot.** Only one single family residence building, together with one appurtenant outbuilding, may be constructed on a single family residential lot. No outbuilding shall be used as a residence or living quarters. No single family residential lot shall be divided or resubdivided into smaller lots.

b. **Multiple unit lot.** The number of individual buildings or apartments which may be constructed on any multiple unit lot shall not exceed the number of units designated by the Declarant. Only such retail or service business may be conducted on any of such lots as may be approved by Declarant. Each of such lots may be divided or resubdivided into lots or areas vertically as well as horizontally, provided that the written consent of the Declarant to such division or resubdivision is first obtained.

c. **Hotel use.** The number of hotel accommodation rooms which may be constructed on any hotel lot shall not exceed the number of rooms or apartment units designated by the Declarant. Within the hotel structures or appurtenant structures to the hotel building or buildings, various businesses as are normally conducted in quality hotels may be maintained and operated, such as retail and service enterprises; provided, however, no gas, oil or automobile service station business may be permitted. Each of such lots may be divided or resubdivided into lots or areas, vertically as well as horizontally, provided that the written consent of Declarant to such division or resubdivision is first obtained.

**Section 2.** All lots within Princeville at Hanalei, except as otherwise specifically provided shall be subject to the following limitations and restrictions:

a. No building, fence, wall or other structure shall be constructed, erected or maintained on any lot or area, nor shall any addition thereto or change of alteration therein be made until the complete plans and specifications therefor, prepared by a registered architect or professional engineer licensed in the State of Hawaii (including, but not limited to, the floor, elevation, plot and grading plans; the specifications of principal exterior materials, color schemes and the location, character and method of utilization of all utilities; landscape plans; and automobile parking provisions; outside lighting plan), have been submitted to the Community Design Committee as provided in Article IV, hereinafter referred to as the "Committee."

b. Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.  
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c. In passing upon all such plans and specifications, the Committee shall take into consideration the suitability of the proposed building or other structure and the materials of which it is to be built to the lot upon which it is to be erected, its harmony with the surroundings and the effect of the building on other structures, as planned, as viewed from adjacent or neighboring lots. The Committee shall use reasonable judgment in passing upon all such plans and specifications, but shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

d. **Dwelling cost, quality and size.** No residence shall be permitted on any single family residential lot at a building cost or value less than Thirty Thousand Dollars (\$30,000.00) based upon cost levels prevailing on the date this Declaration is recorded. Building cost shall include actual construction cost of dwelling and garage, a reasonable architect's fee and a reasonable profit to the builder, but shall not include the cost of landscaping, fences, other permissible structures or the cost of the lot. It is the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced at the date these covenants are recorded at the stated minimum cost.

e. **Building location.** No building shall be located on any lot nearer than 20 feet to the street lot line, nearer than 30 feet to the rear lot line or nearer than 10 feet to side lot lines unless approved by the Committee.

f. **Standard exterior architectural restrictions.**

Except as otherwise approved by the Committee:

(1) All vertical exterior surfaces of structures shall be of natural material.

(2) The roofs of structures constructed on single family residential lots shall be covered with such materials of earth tones as are from time to time established by the Committee and shall not exceed a maximum pitch of 12:12 or 45 degrees.

(3) Each outbuilding constructed on a single family residential lot must conform in architectural style and in the external construction materials employed to the residential structure constructed on such a lot.

(4) Each single family residential lot, when improved, must be equipped with one or more front lawn or other exterior light or lights, which must be operated by photoelectric cell and be maintained in an operating condition.

(5) Each single family residential lot, when improved, must have not less than two automobile parking spaces on a graveled or hard-surfaced driveway. Special parking requirements shall be established by the Committee with respect to structures to be constructed on multiple unit and hotel lots.

(6) No exterior antenna or aerial shall be maintained on the lots.

(7) Laundry facilities and any service or utility area, including any area for hanging clothes, must be completely screened from view on all sides.

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(8) Each residential structure or apartment unit shall be equipped with an electric garbage disposal unit, which shall be maintained in an operating condition.

(9) The following building height restrictions, measured from the highest natural grade at any point on the perimeter of the foundation of the structure to the highest point of the coping of the top story in the case of a flat roof, or to the deck line of a mansard roof, or to the average height between the plate and ridge of a gable, hip or gambrel roof, are hereby imposed:

Single family residential lots 25 feet

Multiple unit lots 40 feet

Hotel lots 40 feet

The height restrictions may, however, be increased or decreased by the Committee in the event the Committee determines that such restrictions work an undue hardship; or would unduly impair or not impair sightliness to the ocean.

(10) The Owner of each structure constructed on the lots shall maintain the structure in good repair at all times and shall cause all external surfaces that are stained or painted to be restained or repainted at sufficient intervals as to prevent the structure from detracting from the beauty of Princeville at Hanalei.

#### **g. Landscaping controls:**

(1) Commencing with the transfer of any land in Princeville at Hanalei from Declarant, the Owner shall cause all the land to be maintained in a neat appearance at all times. Grass shall be cut not less than every two weeks and trees, bushes and hedges shall be trimmed at such intervals as are necessary to maintain the beauty of Princeville.

(2) Within 90 days following the transfer of any single family residential lot in the Princeville at Hanalei from Declarant, the Owner of such land shall landscape the land in a fashion approved by the Committee, which landscaping shall consist of at least the following:

(a) removal and beautification of any condition existing on the land which in the judgment of the Committee should be corrected; and

(b) the planting of not less than five trees, with not less than two such trees being of a flowering variety or varieties.

(3) Walls, fences and incidental garden structures shall be designed so as to be attractive from any viewable side. No wall, fence, hedge or other continuous planting may exceed six feet in height, and no wall or fence may be placed within 10 feet of any boundary line. No fence, hedge or other continuous planting may be constructed or maintained within 20 feet of any lot boundary line which abuts the golf course.

(4) No existing tree shall be cut or removed from any lot except with the written approval of the Committee.

(5) The aggregate of graveled or paved surfaces on a single family residential lot shall not exceed 30 percent of the portion of the lot not covered by building structures.  
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**h. Garbage and refuse disposal.** No land within Princeville at Hanalei, shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All equipment for the storage or disposal for such material shall be kept in a clean and sanitary condition and container storage facilities not enclosed shall be constructed below ground level so as to allow for full recession of containers into the ground.

**i. Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved to the Declarant or its assignee as shown on the file plan. Within these easement areas no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in the easement areas.

**j. Temporary structures.** Except for the temporary construction camp of Declarant, no temporary buildings, structures, outhouses, sheds, tents or trailers of any kind shall be erected, altered, placed or permitted to remain on any land in Princeville at Hanalei, except as expressly otherwise provided herein. Temporary structures or trailers may be erected or placed on any land during a reasonable period of construction for use as a construction office and supply shelter, but in no event as a residence. The temporary construction structures or trailers shall remain upon the land only during the period of construction of permanent improvements, thereon and must be removed within 30 days after completion of such construction. Any surplus material from construction must be removed within that 30 days.

**k. Nuisances.** No noxious or offensive activity shall be carried on upon any land in Princeville at Hanalei, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**l. Signs.** No signs, placards, or notices shall be erected, placed, maintained or permitted to remain on any part of any land in Princeville at Hanalei, except such commercial signs as have been approved by the Committee for identification of residences, streets or areas, places of business, or other commercial uses.

**m. Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any land in the subdivision, except that a reasonable number of dogs, cats, or other common household pets may be kept; provided, however, that they are not kept, bred, or maintained for any commercial purpose.

**n. Automobiles, boats and trailers.** No automobile, truck, boat, trailer or other vehicle shall be parked on any street or road or any part of the right of way of any street or road in Princeville at Hanalei at any time. No automobile, truck, boat, trailer or other vehicle which is in an inoperative condition shall be parked on any land within Princeville at Hanalei for a period longer than 48 hours, nor shall any such equipment be dismantled, repaired or serviced on any land within Princeville at Hanalei in an area visible from neighboring land or the golf course.

**o. Lien.** Each owner grants to Declarant, and there is excepted and reserved to Declarant, a lien upon the lot of the Owner to secure the faithful performance by the Owner of the requirements of Section 2f(10) and Sections 2g(1) and (2) of this Article III. If any Owner shall fail to comply with Section 2f(10) or Section 2g(1) or (2) within 10 days after Declarant shall have deposited in the United States postal system a notice to the Owner of the failure to comply, Declarant shall  
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have the right to cause the necessary work to be done and to have a lien upon the land of the non-complying Owner for the reasonable cost of such work plus an additional amount equal to 10% of the cost of such work. If within 30 days the noncomplying Owner does not pay to Declarant the

sum secured by the lien, then Declarant may foreclose the lien in compliance with the mortgage foreclosure laws of the State of Hawaii for the aggregate of (i) the reasonable cost of such work, (ii) a sum equal to 10% of such work, and (iii) all costs incurred by Declarant in foreclosing the lien, including a reasonable attorney's fee.

#### **Article IV Community Design Committee**

**Section 1.** There shall be a Community Design Committee consisting of five members appointed by the Declarant, one of whom must be a resident of the District of Hanalei, County of Kauai, State of Hawaii. Declarant shall have the right to appoint one or more alternates for the members of the Committee, which alternates shall have the power as voting members of the Committee in the event the members for whom they are alternates are unavailable to act as members of the Committee. The members of the Committee, and their alternates, shall serve until death, resignation or their removal from the Committee by the Declarant.

**Section 2.** A majority of the Committee members in office at the time shall constitute a quorum for the transaction of business, and all action taken by the Committee at any meeting at which a quorum is present shall be by a simple majority of those present. No formal meetings shall be required of the Committee, and any action may be taken by the Committee without a meeting by written consent signed by a majority of the Committee members.

Upon the death, resignation or removal of a member of the Committee, the remaining member or members of the Committee shall designate a replacement for such member to serve until such time as Declarant replaces such temporary successor member with a permanent successor member.

**Section 3.** It shall be the duty of the Committee to consider and act upon proposals or plans from time to time submitted to it pursuant to the provisions of Article III, to adopt Committee rules as provided in Section 5 of this Article IV and to perform such other duties from time to time delegated to it by the Princeville at Hanalei Restrictions. The Committee's approval or disapproval shall be given in writing within a reasonable period of time after complete submittal of plans and specifications. After complete submittal of plans and specifications, any interested party may demand the decision of the Committee within 30 days after the Committee's receipt of the demand, and if the Committee fails to disapprove within 30 days, no approval shall be required.

**Section 4.** Upon payment of a reasonable fee, not in excess of Twenty Dollars (\$20.00), the Committee shall provide any Owner entitled thereto with a statement in recordable form approving any proposed or completed work of construction, improvement or alteration or a statement varying the requirements of the setback provisions contained in Article III.

**Section 5.** The Committee may from time to time and in its sole discretion, adopt, amend and repeal by majority vote, rules and regulations to be known as the "Community Design Committee Rules" among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements which must be approved by the Committee. A copy of such rules, as they may from time to time be adopted, amended or repealed, certified by PHCA Protective Covenants, Page 8

any member of the Committee shall be available at all times at the office of the Association and at the office of the Declarant, for the inspection of any Owner, architect or agent of the Owner or architect.

**Section 6.** Neither the Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any land within Princeville at Hanalei, or (d) the execution and filing of a certificate pursuant to Section 4 of this Article IV, whether or not the facts therein are correct, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

**Article V**  
**Princeville at Hanalei Community Association**

**Section 1.** The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and its Charter and By-Laws.

**Section 2.** Every Owner of a lot which is subject to assessment by the Association shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

**Section 3.** The voting rights of the members shall be set forth in the Charter and By-Laws of the Association.

**Section 4.** The Association shall have the rights, obligations and duties, subject to the Princeville at Hanalei Restrictions, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Princeville at Hanalei.

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

b. The Association shall accept title to all Common Areas and other land from time to time conveyed to it. The Association may also acquire and accept title to any other property, real, personal or mixed. The Association may charge reasonable fees for use of the recreational facilities on the Common Areas to help defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by the Association.

c. The Association shall maintain or provide for the maintenance of the Common Areas and improvements located on the Common Areas.

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

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

f. The Association shall obtain and maintain in force such insurance policies as the Board may deem appropriate.

g. The Association shall have all the powers set forth in the Princeville at Hanalei Restrictions, including, without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by Princeville at Hanalei Restrictions, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of Princeville at Hanalei Restrictions, the Princeville at Hanalei Rules and the Committee Rules.

**Section 5.** The Association shall have all the powers set forth in the Charter, together with its general powers as a nonprofit corporation, and to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of Princeville at Hanalei Restrictions. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

a. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any lot, for the purpose of maintaining and repairing any lot, if for any reason the Owner fails to maintain and repair the lot as required under Article III, or for the purpose of removing any improvement constructed, recon-

structed, refinished, altered or maintained upon such area in violation of Article III. The Association may maintain and repair any roads, sidewalks, parks or public areas in or adjoining Princeville at Hanalei, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Board have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of Princeville at Hanalei Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Princeville at Hanalei Restrictions.

b. In fulfilling any of its duties under the Princeville at Hanalei Restrictions, including its duties for the maintenance, repair, operation or administration of the Common Areas, and to the extent necessary by the failure of the Owners of private areas, or in exercising any of its rights to construct improvements or other work upon any Common Area, the Association shall have the power and authority:

(1) To contract and pay for, or otherwise provide for, construction, maintenance and repair of all improvements upon Common Areas on such terms and conditions as the Association shall deem appropriate and to pay and discharge all liens arising out of any work;

(2) To obtain, maintain and pay for such insurance policies or bonds as the Board may deem to be appropriate for the protection or benefit of Princeville at Hanalei, the Association, the members of the Board, the members of the Committee, or the Owners;

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(3) To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water, sewer, trash, electrical, telephone and gas service as may from time to time be required;

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

(5) To contract and pay for, or otherwise provide for fire, police and such other protection services as the Board deems necessary for the benefit of Princeville at Hanalei, any property located within Princeville at Hanalei, or the Owners;

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

c. The Board shall be required to grant and convey to any third parties easements or rights-of way in, on, over or under any Common Area without payment to the Association when requested by Declarant. The Board shall also have the power and authority to grant and convey to any third parties, on such terms as the Board may approve, parcels or strips of land from any Common Area.

d. The Board may from time to time employ the services of a manager to manage the affairs of the Association. The Board may delegate to the manager any of its powers under the Princeville at Hanalei Restrictions, provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$10,000; nor for the performance of any work or services, which work or services are not to be completed within 60 days; nor the power to sell, convey, mortgage or encumber any property of the Association.

e. The Board shall have the right to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Area, or upon any personal property belonging to the Association.

**Section 6.** The Board from time to time and subject to the provisions of the Princeville at Hanalei Restrictions may adopt, amend and repeal rules and regulations to be known as the Princeville at Hanalei Rules governing among other things:

- (1) the use of Common Areas, including without limitation the recreational facilities;
  - (2) the use of roads;
  - (3) the collection and disposal of refuse;
  - (4) the burning of open fires; and
  - (5) the maintenance of animals within Princeville at Hanalei.
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**Section 7.** No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

**Section 8.** The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in subsection (b) of section 5.

## **Article VI Assessments**

**Section 1.** The Declarant for each lot owned by it within Princeville at Hanalei hereby covenants, and each Owner of any lot by acceptance of a purchase and sale agreement, deed or lease therefor, whether or not it shall be so expressed in any such deed, lease or any other conveyance, shall be deemed to covenant and agree to pay to the Association his proportionate share of maintenance assessment and special assessment for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The term "lot" as used in this Article VI shall mean and refer to only that land (a) described in Exhibit "A" or hereafter annexed subject to the Princeville at Hanalei Restrictions, and (b) designated by the Declarant as a single family residential, multiple unit or hotel lot.

**Section 2.** The Owner's proportionate share of the maintenance and special assessments shall be based on the land area of his lot multiplied by the following weighting factor.

Single family 1  
Multiple unit 1  
Hotel 2

The assessment for each lot shall be calculated by the use of the following formula:

Land area of lot as weighted  
Total land area as weighted of x Total assessments  
all lots subject to assessment

**Section 3.** At least 30 days prior to the commencement of each fiscal year, the Board shall fix the amount of the maintenance assessment for such fiscal year and shall, at that time, prepare a roster of the lots and assessment applicable thereto. Written notice of the assessment shall be sent to every Owner subject thereto.

**Section 4.** The maintenance assessments levied by the Association shall be used exclusively for the purpose of financing the Association functions and duties.

**Section 5.** If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in Section 2 of Article VI.

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**Section 6.** In addition to the maintenance assessment authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who vote in person or by proxy at a meeting duly called for this purpose.

**Section 7.** The Board shall also levy an assessment against any Owner, as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Princeville at Hanalei Restrictions, the Princeville at Hanalei Rules or the Committee Rules, for moneys expended by the Association in performing its functions under the Princeville at Hanalei Restrictions. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied. Moneys so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.

**Section 8.** Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of a purchase and sale agreement, deed or lease, whether or not it shall be so expressed in any such purchase and sale agreement, deed or lease, shall be deemed to covenant and agree to pay the assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at 10% per annum and costs, including reasonable attorney's fees, shall be and become a lien upon the lot of such Owner upon recordation by the Association of a notice of default. Such lien shall be subject to and subordinate to the lien of any mortgage on the lot of such Owner, and to the lien of the water and sewer assessments of the nonprofit corporation operating same. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association assessment lien may be foreclosed through suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the lot. A suit to recover a money judgment for unpaid assessments shall be maintained without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

**Section 9.** The Common Area as defined in Article I and such portions of Princeville at Hanalei as may be conveyed or dedicated to and accepted by a public utility, State of Hawaii, the County of Kauai, or by the Kauai County Public Improvement Corporation shall be exempt from assessments.

**Section 10.** When requested by an Owner, the Association shall execute a certificate stating the indebtedness secured by the Association lien upon the lot of the Owner, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing the certificate.

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## **Article VII**

### **Sewer and Water Assessments**

**Section 1.** Each lot within Princeville at Hanalei and certain other land shall be subject to the water and sewer assessments of Kauai County Public Improvement Corporation, a nonprofit corporation. Each lot shall also be subject to a tap fee for waterline and sewer connections to the lot and to monthly fees for the use of water and sewer system.

The term "lot" as used in this Article VII shall have the meaning as that term has in Article VI.

## **Article VIII Miscellaneous Provisions**

**Section 1.** In addition to the rights reserved to the Declarant to modify or supplement the Princeville at Hanalei Restrictions with respect to land annexed to Princeville at Hanalei, the Princeville at Hanalei Restrictions, may, at any time, be amended or repealed upon the happening of all the following events:

- a. The vote of the Owners having not less than three-fourths (¾) of the total votes of each class of Owners of lots then within Princeville at Hanalei approving the proposed amendment or amendments or the repeal of Princeville at Hanalei Restrictions at a meeting of the Association duly held. The notice of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Princeville at Hanalei Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be; and
- b. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Princeville at Hanalei Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to Section 1.a. of this Article VIII.

**Section 2.** All the limitations, restrictions, covenants and conditions of Princeville at Hanalei Restrictions are to run with the land and shall be binding on all parties and persons claiming under them for a 55 year period beginning March 1, 1971, and ending February 28, 2026, at which time the same shall be automatically extended for successive periods of 5 years, unless the record Owners of lots then within Princeville at Hanalei having not less than three fourths (¾) of the total votes record an instrument terminating the Princeville at Hanalei Restrictions within 1 year prior to the commencement of any such period. Any such termination shall take effect upon expiration of the period during which it is given.

**Section 3.** In addition to the remedy provided in Section 2.o. of Article III, if the Owner of any lot in Princeville at Hanalei or any part thereof or interest therein violates any provisions hereof, Declarant, the Association or the Owner of any lot or part thereof or interest therein may bring an appropriate civil action against the defaulting party to enforce specific compliance with Princeville at Hanalei Restrictions, or to recover damages for such violation, plus costs and a reasonable attorney's fee as may be incurred by said prosecuting party in such proceedings or action; provided, however, that Declarant or the Association shall have no duty under any circumstances to enforce compliance with Princeville at Hanalei Restrictions. Failure by the Declarant, the PHCA Protective Covenants, Page 14

Association or any property Owner or Owners or their representatives, heirs, successors, or assigns to enforce any of the limitations, covenants, restrictions, reservations, easements, or charges herein contained shall, in no event be deemed a waiver of the right to do so thereafter; provided, however, any structure which has been completed for a period of 1 year without any suit having been commenced concerning such structure, shall not thereafter be subject to suit for initial non-compliance with the requirements of Sections 2.a., b. and c. and 2.f. of Article III.

**Section 4.** All the limitations, restrictions, covenants and conditions of Princeville at Hanalei Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of Princeville at Hanalei.

**Section 5.** In the event any limitation, covenant, restriction, or reservation of Princeville at Hanalei Restrictions is held to be invalid or unenforceable in whole or in part, by any order, judgment

or decree of any court, then such decision shall in no wise affect the validity of the other limitations, covenants, restrictions or reservations therein contained, and they shall remain in full force and effect.

**Section 6.** The Association shall accept all land conveyed to it as Common Area by the Declarant.

**Section 7.** At any time and from time to time following conveyance of Common Area by the Declarant to the Association, the Declarant may construct, reconstruct, refinish or alter any improvement upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area if the Declarant shall determine that any such work is reasonably necessary for any utility installation serving any property within Princeville at Hanalei, is reasonably necessary for the construction of any facility for use by the Owners, is desirable in order to provide or improve access to or to enhance the use and enjoyment of such Common Area or is desirable to protect, support or preserve any land which constitutes a part of Princeville at Hanalei.

**Section 8.** Any and all of the rights and powers vested in the Declarant pursuant to the Princeville at Hanalei Restrictions may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

**Section 9.** If at any time or from time to time all or any portion of the Common Area is taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right to participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

**Section 10.** No Owner through his non-use of any Common Area, or by abandonment of his lot, may avoid the burdens or obligations imposed on him by the Princeville at Hanalei Restrictions by virtue of his being an Owner.

PHCA Protective Covenants, Page 15

**Section 11.** Any notice or other document permitted or required by the Princeville at Hanalei Restrictions to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association twenty-four (24) hours after having been deposited in the United States mail, postage prepaid, addressed to the Princeville at Hanalei Association at the address designated by the Association from time to time, and shall be deemed to have been delivered to the Committee twenty-four (24) hours after having been deposited in the same manner addressed to the Committee in care of the Princeville at Hanalei Association at the latter's then current address.

Delivery by mail shall be deemed complete to an Owner twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at his address filed with the Association or the Declarant.

Where there is more than one Owner of a lot the delivery personally or by mail to any one Owner of the lot shall be effective delivery to all Owners of such lot.

**In Witness Whereof,** the Declarant has executed this Declaration the day and year first written above.

**Eagle County Development Corporation**

**L. Douglas Hoyt**  
President

**J. Thomas Phoenix**  
Secretary

### **Established Land Classification**

#### **A. Single Family Residential Lots**

**Unit 1, Lots 1-222**

**Unit 2, Lots 1-143**

**Unit 3, Lots 1-95**

**Unit 4, Lots 1-109**

#### **B. Multiple Unit Lots**

**Lots: 2-14, 15A, 15B, 16, 17, 18A, 18B, 20-24 and 42**

#### **C. Hotel Use**

**Lots: 25, 26A, 26B and 27**

## **PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION CHARTER OF INCORPORATION**

**To whom all these presents shall come:**

**I, Edwin H. Honda**, Director of Regulatory Agencies of the State of Hawaii, send Greetings:

**Whereas, L. Douglas Hoyt**, a resident of the State of Colorado, and **Donn A. Carswell** and **Ned W. High**, both of whom are residents of the State of Hawaii, have signed, verified and filed with me as Director of Regulatory Agencies of the State of Hawaii, a petition to grant them a Charter of Incorporation for purposes provided in Section 416-19, Hawaii Revised Statutes, in the form hereof;

**Now, therefore, know ye**, that I, the said **Edwin H. Honda**, as Director of Regulatory Agencies of the State of Hawaii, and in execution of every power and authority in any wise enabling me in this behalf, hereby, in accordance with the provisions of Sections 416-19 and 416-20, Hawaii Revised Statutes, grant to the said **L. Douglas Hoyt, Donn A. Carswell** and **Ned W. High** a Charter of Incorporation for the purposes and in the form hereafter set forth:

### **I.**

#### **Name**

The name of the corporation shall be "**Princeville at Hanalei Community Association.**"

### **II.**

#### **Location**

The location of the corporation shall be in Hanalei, County of Kauai, State of Hawaii, and the address of its initial office shall be P.O. Box 121, Hanalei, Kauai, Hawaii.

### **III.**

#### **Purpose**

This corporation does not contemplate pecuniary gain or profit to the members thereof, and the purpose for which it is formed is to provide for the management, maintenance, protection, preservation, architectural control and development of property in the District of Hanalei, County of Kauai, State of Hawaii, within the area known as "Princeville at Hanalei" and to promote the health, safety and welfare of its members.

#### IV.

In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to chartered nonprofit corporations, the corporation shall have succession and existence in perpetuity and shall have and exercise any and all powers, rights, privileges and immunities which are now or may hereafter be secured by law to chartered nonprofit corporations organized under the laws of the State of Hawaii. Without limitations as to other powers stated or referred to in this Charter, the corporation shall have the following powers:

- a. It may exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions applicable to the property and recorded or to be recorded in the Bureau of Conveyances of the State of Hawaii, and as the same may be amended from time to time as therein provided, hereinafter called the "Declaration";  
PHCA Charter of Incorporation, Page 2
- b. It may fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes of governmental charges levied or imposed against the property of the Association. The term "Association" as used herein shall have the meaning given in the Declaration and shall be synonymous with the term "corporation" as used herein;
- c. It may purchase, hold, improve, build upon, operate, maintain, rent, lease, assign, sell and convey and to receive gifts and otherwise acquire real property in fee simple or by lease as the purpose of the corporation shall require or appear to be served, without limit as to amount;
- d. It may borrow money, and mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- e. Insofar as permitted by law, to do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of its members.

#### V.

##### Officers

The officers of the corporation shall be a President, Vice President, Secretary, Treasurer, Assistant Secretary and an Assistant Treasurer, and such other officers as may be provided in the By-Laws. The Treasurer and/or Secretary may be an individual, firm or corporation. The offices of Secretary and Treasurer and the offices of Assistant Secretary and Assistant Treasurer may be held by the same person. No officer need be a member of the corporation. The officers shall be elected or appointed as provided in the By-Laws. The names and addresses of the initial officers are as follows:

<u>Name</u>	<u>Office and Address</u>
L. Douglas Hoyt	President Residence Address: 357 Jersey Street, Denver, Colorado Business Address: 1860 Lincoln Street, Denver, Colorado
Donn A. Carswell	Vice-President Residence Address: Hanalei, Kauai Business Address: P.O. Box 12, Hanalei, Kauai
Ned W. High	Secretary-Treasurer Residence Address: Hanalei, Kauai Business Address: P.O. Box 121, Hanalei, Kauai
Sam I. Kawamura	Assistant Secretary-Treasurer Residence Address: Hanalei, Kauai Business Address: P.O. Box 121, Hanalei, Kauai

**VI.**

**Board of Directors**

The affairs of the corporation shall be managed by a Board of Directors consisting of not less than three (3) nor more than five (5) members, and the initial Board of Directors shall consist of three (3) directors. The members of the Board of Directors shall be elected or appointed and shall hold office and may be removed as may be prescribed by the By-Laws. The directors need not be members of the corporation. The names, addresses and initial tenure of office of the persons who are to act as the initial directors of the corporation are as follows:

To hold office until the first annual meeting of the members of the corporation:

Name \_\_\_\_\_ Address \_\_\_\_\_  
Ned W. High P.O. Box 121, Hanalei, Kauai

To hold office until the second annual meeting of the members of the corporation:

Name \_\_\_\_\_ Address \_\_\_\_\_  
Donn A. Carswell P.O. Box 121, Hanalei, Kauai

To hold office until the third annual meeting of the members of the corporation:

Name \_\_\_\_\_ Address \_\_\_\_\_  
L. Douglas Hoyt 1860 Lincoln Street, Denver, Colorado

**VII.**

**Membership**

Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, the "Owner" of any Lot (within Princeville at Hanalei) as defined in Article I of the Declaration shall be a member of the corporation. The term "Lot" as used herein shall have the meaning given it in Article I of said Declaration. Proof of status as an "Owner" of any such Lot for purposes of establishing membership in the corporation shall be furnished in accordance with the provisions pertaining thereto set forth in the By-Laws. Membership shall be appurtenant to and may not be separated from the ownership of any such Lots, and such ownership shall be the sole qualification for membership in the corporation.

**VIII.**

**Voting Rights**

The corporation shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to the following number of votes for each Lot owned:

- Residential Lot/1 vote
- Multiple Unit Dwelling/1 vote per residential unit
- Hotel/2 votes per hotel accommodation room

When more than one person holds an interest in any Lot, all such persons shall be members. Voting for such Lot shall be exercised as they among themselves determine, but in no event shall more than the number of votes said Lot is entitled to be cast.

**Class B.** The Class B member shall be the Declarant as defined in the Declaration. The Class B member shall be entitled to three votes per Lot owned by it. The Class B membership shall cease and be converted to Class A membership on December 31, 1991.

Additional property may be annexed to the area specified in Article III hereof, and so add to the membership of the corporation under the provisions of Article VII hereof.

#### **IX.**

##### **By-Laws**

The initial By-Laws of the corporation shall be adopted by the person who signed the petition for a charter of incorporation, within thirty (30) days after granting hereof. The By-Laws may be amended or repealed, and new By-Laws may be adopted in the manner provided in the By-Laws.

#### **X.**

##### **Nonprofit Organization**

The corporation is not organized for profit, and it shall not issue any stock, and no part of its assets, income or earnings shall be distributed to its members, directors or officers, except for services actually rendered to the corporation.

#### **XI.**

##### **Powers Not Expressly Denied**

The corporation shall possess any and all powers not expressly denied by law or this Charter of Incorporation.

#### **XII.**

##### **Rights, Powers and Duties Described in the By-Laws**

The rights, powers and duties of the members of the corporation, the Board of Directors and the several officers shall be as set forth in the By-Laws.

#### **XIII.**

##### **Liability**

The property of the corporation shall alone be liable in law for the payment of its debts and the discharge of its obligations. Neither the members of the corporation nor the members of the Board of Directors nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that every member of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as in the Declaration provided.

#### **XIV.**

##### **Mergers and Consolidation**

To the extent permitted by law, and subject to the provisions of said Declaration, the corporation may participate in mergers and consolidation with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of not less than sixty-six and two-thirds percent (66 2/3 %) in voting interest of the members.

PHCA Charter of Incorporation, Page 5

#### **XV**

##### **Authority to Mortgage**

Any mortgage by the corporation of the common area defined in the Declaration shall have the assent of a majority of the members present at a meeting in person or by proxy.

#### **XVI**

##### **Dedication and Disposition of Real Property**

The corporation shall have power to dispose of its real property or interest therein or leasehold interest in real property with the assent of not less than sixty-six and two-thirds percent (66 2/3%) in voting interest of the members; subject to the provisions of said Declaration.

#### **XVII.**

##### **Dissolution**

The corporation may be dissolved with the assent, given in writing and signed, by not less than seventy-five percent (75%) in voting interest of the Class A members and seventy-five percent (75%) in voting interest of the Class B members, if any. Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes and uses that would most nearly reflect the uses to which they were required to be devoted by the corporation.

#### **XVIII.**

##### **Meetings for Actions Governed by Articles XIV, XVI and XVII**

Except as otherwise provided in the Declaration, in order to take action under Articles XIV, XVI and XVII, there must be a duly held meeting. Written notice, setting forth the purpose of the meeting shall be given to all members not less than 15 days nor more than 30 days in advance of the meeting. The presence of members or of proxies entitled to cast 2/3 of the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 30 days following the preceding meeting.

#### **XIX.**

##### **Amendments**

Amendments of these Articles shall require the assent of not less than seventy-five percent (75%) in voting interest of the Class A members and seventy-five percent (75%) in voting interest of the Class B members, if any.

#### **XX.**

##### **Duration**

The corporation shall exist in perpetuity.

PHCA Charter of Incorporation, Page 6

#### **XXI.**

##### **Subject to General Laws**

The corporation shall be subject to all general laws now in force or hereafter enacted and applicable to nonprofit corporations in the State of Hawaii.

**Given** under my hand and seal of the Office of the Director of Regulatory Agencies of the State of Hawaii, this 15th day of March, 1971.

**Edwin H. Honda**

Director of Regulatory Agencies/State of Hawaii

**James K. Williams**

Corporation and Securities Administrator

**PRINCEVILLE AT HANAIEI COMMUNITY ASSOCIATION  
BY-LAWS**

**Article 1**

**Name and Location**

The name of the corporation is **Princeville at Hanalei Community Association** hereinafter referred to as the "Association." The principal office of the corporation shall be located at Hanalei, County of Kauai, Hawaii.

**Article II**

**Membership and Voting Rights**

**Section 1. Membership.** Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are an "Owner" of any "Lot" (within Princeville at Hanalei) as defined in the Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time (herein called the "Declaration"), shall be a member of the corporation, and no person other than such an Owner may be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Voting Rights and Proxies.**

a. At any meeting of the members of the association, each member shall be entitled to cast the number of votes to which he is entitled pursuant to the provisions set forth in Article VIII of the Charter of Incorporation of the association.

b. Any member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the member and filed with the secretary of the association. Where two or more persons constitute a member, any one of said persons may exercise, in person or by proxy, the vote allocated to the member on behalf of all persons constituting the member, unless the association is notified in writing that the persons constituting the member disagree as to how the vote should be cast. In such event, the vote for said member shall not be counted unless the majority of the persons that are voting in person or by proxy on behalf of the member agree and confirm in writing to the association on how the vote should be cast.

c. The rights of membership are subject to the payment of assessments levied by the association, the obligation of which assessments is imposed against each owner of and becomes a lien upon the lot against which such assessments are made as provided in the Declaration.

d. The membership rights of any person may be suspended by action of the Directors during the period when the member shall be in default in the payment of any assessment levied by the association; but, upon payment of such assessments, his rights and privileges shall be automatically restored.

e. No membership shall be terminated or forfeited and no member shall be expelled, except upon sale of the Lot; provided, however, that upon execution and delivery of a valid agreement of sale of any Lot, the vendor's membership, including voting rights adhering thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of deed in compliance with the terms of said agreement of sale.

PHCA By-Laws, Page 2

**Section 3. Meetings; Notice; Quorum.**

a. An annual meeting of the members of the association shall be held each year on such date and at such time and at such place in the County of Kauai, State of Hawaii, as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting.

b. Special meetings of the members of the association may be held at such place in the County of Kauai, State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board of Directors or by a writing filed with the secretary signed by the president, or by a majority of the directors, or by ten percent in voting interest of the entire membership of the association.

c. Except where and to the extent otherwise required by law, the Charter of Incorporation or the Declaration, notice of each meeting of the members of the association, specifying the day and time and place of the meeting and the purpose for which the meeting is called, and specifying whether it is an annual meeting or special meeting, shall be given by or under the direction of the secretary to each member of the association at least ten days before the date fixed for such meeting, by advising him in writing at his residence address or usual place of business. In case of death, absence, incapacity or refusal of the secretary, such notice may be given by a person designated by the Board of Directors. If notice is given pursuant to the provisions of these By-Laws, nonreceipt of actual notice of any meeting by any member of the association shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. No notice of any meeting need be given to any member of the association who at the time of the meeting is absent from the State of Hawaii. Any member of the corporation may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to him. The presence of any member of the association at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

d. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Charter of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. When a quorum is present at any meeting, the concurring vote of members having a majority of the votes of the members constituting a quorum shall be valid and binding upon the association except as otherwise provided by law, the Charter of Incorporation, the Declaration or these By-Laws.

### **Article III**

#### **Board of Directors**

**Section 1. Number and Term of Office.** The affairs of the association shall be managed by a Board of not less than three (3) but not more than five (5) directors, who need not be members of the association, as may from time to time be determined by the members of the association. Until the members of the association shall otherwise determine, the Board of Directors shall consist of three (3) members.

The directors shall be classified by dividing them into three (3) classes. The director of the first class shall hold office until the first annual meeting of the members of the association, at which time a successor of the first class of director shall be elected for a term of three (3) years. The director of the second class shall hold office until the second annual meeting of the members of the association; and the director of the third class shall hold office until the third annual meeting of the members of the association. At each annual election of a director, the successor to the class of director whose term shall expire in that year shall be elected for a term of three (3) years. In case of any increase in the number of directors, each class shall be respectively increased so that after any such increase, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors.

**Section 2. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the members of the association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

**Section 3. Compensation.** No director shall receive compensation for any service he may render to the association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**Section 4. Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

### **Article IV**

#### **Meetings of Directors**

**Section 1. Meetings.** Regular meetings of the Board of Directors shall be held monthly without notice, as such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

An annual meeting of the Board of Directors shall be held each year immediately after the annual meeting of the members of the association and at the place of such annual meeting, without call or formal notice.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the association, or by any two directors, after not less than one (1) day notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

### **Article V**

## **Nomination and Election of Directors**

**Section 1. Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine. Such nominations may be made from among members or nonmembers.

**Section 2. Election.** Election to the Board of Directors shall be by written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Charter of Incorporation. The persons receiving the largest number of votes shall be elected. Cumulative voting shall be permitted.

## **Article VI**

### **Powers and Duties of the Board of Directors**

**Section 1. Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the association and may do all acts in exercise thereof consistent with the purposes and objects as set forth in the Charter of Incorporation, Declaration and By-Laws. Without prejudice to the generality of the foregoing the Board of Directors shall have power and duty:

- a. To adopt and publish rules and regulations consistent with the Charter of Incorporation, By-Laws and Declaration, governing the use of the common areas and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
  - b. To exercise for the association all powers, duties and authority vested in or delegated to this association not reserved to the membership by other provisions of these By-Laws, the Charter of Incorporation, or the Declaration;
  - c. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
  - d. To employ and remove at pleasure all agents, employees, independent contractors, or such other persons as they deem necessary, prescribe their duties and fix their compensation;
  - e. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (¼) of the Class A members who are entitled to vote;
- PHCA By-Laws, Page 5
- f. To supervise all officers, agents and employees of this association, and to see that their duties are properly performed;
  - g. As more fully provided in the Declaration,
    - (1) to set the annual budget and allocate the assessment against each lot at least thirty (30) days in advance of each assessment period;
    - (2) to send written notice of each assessment to every Owner subject thereto at least twenty-five (25) days in advance of each assessment period;
  - h. To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid;

i. To procure and maintain adequate liability insurance, and to procure adequate hazard insurance on property owned by the association;

j. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

k. To cause the common area and any furniture, fixture and mechanical equipment thereof to be administered, maintained, repaired, rebuilt and restored in accordance and consistent with all applicable laws, ordinances, rules and regulations now or hereafter made by any governmental authority and with the provisions of the Charter of Incorporation of the association, the Declaration and these By-Laws.

## **Article VII Committees**

The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, create and appoint one or more committees which, to the extent provided in said resolution or resolutions or in other provisions of these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the association. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

## **Article VIII Officers and Their Duties**

**Section 1. Enumeration of Offices.** The officers of this association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, treasurer, assistant secretary and an assistant treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

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**Section 3. Term.** The officers of the association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs of the association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. 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 receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. Multiple Offices.** The offices of secretary and treasurer and assistant secretary and assistant treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this article.

**Section 8. Execution of Instruments.** All checks, drafts, notes, acceptances, conveyances, contracts, and other instruments shall be signed on behalf of the association, by such person or persons as are designated by general or special resolution of the Board of Directors, or, in the

absence of any such resolution applicable to any such instrument, by the President or Vice-President and by the Treasurer or Secretary or by the Assistant Treasurer or Assistant Secretary. The officers may adopt and use facsimile signatures.

**Section 9. Duties.** The duties of the officers are as follows:

- a. **President.** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall consign all checks and promissory notes.
- b. **Vice-President.** The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- c. **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the association together with their addresses, and shall perform such other duties as required by the Board.

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- d. **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the association and shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; cause an annual audit of the association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **Article IX**

### **Rules and Regulations**

**Section 1. Adoption.** The Board of Directors may, from time to time and subject to the provisions of the Declaration, adopt, amend and repeal rules and regulations, to be known as "Princeville at Hanalei Rules," governing, among other things:

1. the use of common area and recreational facilities;
2. the use of roads;
3. the collection and disposal of refuse;
4. the burning of open fires;
5. the maintenance of animals; and
6. the personal conduct of the members and their guests.

With respect to paragraph 1 above, the Rules may, without limitation and to the extent deemed necessary by the Board of Directors in order to preserve the benefit of Princeville at Hanalei for all owners, their families, invitees, licensees and lessees, and for guests, restrict and govern the use of common area and recreational facilities by any guest, by any owner, by the family of such owner or by any invitee, licensee or lessee of such owner.

With respect to paragraph 2 above, the Rules may, without limitation, provide for parking restrictions and limitations; maximum speeds for vehicular travel; the time or times when commercial vehicles may be permitted to use the roads; and the types of vehicles other than conventional equipped passenger automobiles which may be permitted to use the roads.

The Board of Directors may also establish penalties for the infraction of the Rules.

**Section 2. Promulgation.** The Secretary shall mail a true and correct copy of all rules and regulations, or amendments thereto to each member of the association as appears on the member-

ship roll of the association at his last known address, and shall enter upon the records of the corporation his certificate of such mailing.

**Section 3. Effective Date.** Any such rule or regulation or amendment thereto, adopted by the Board of Directors shall be effective commencing at 12:01 a.m. on the fifth (5th) day following the date of such mailing, unless the Board of Directors, in adopting the same, shall specify some other effective date.

## **Article X**

### **Seal**

The association may adopt and use a seal and it shall be in such form and device as shall be determined by the Board of Directors.

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## **Article XI**

### **Amendments**

**Section 1.** These By-Laws may be amended or repealed and new By-Laws may be adopted, by action of a majority of the total votes of all members of the association at a meeting of the members of the association duly called and held, the notice of which shall have stated that the purpose of the meeting is to consider the adoption, amendment or repeal of the By-Laws and the general nature of the same."

**Section 2.** In the case of any conflict between the Charter of Incorporation and these By-Laws, the Charter shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**In witness whereof**, we being all of the petitioners of **Princeville at Hanalei Community Association**, have hereunto set our hands this 31st day of March, 1971.

**L. Douglas Hoyt**  
**Donn A. Carswell**  
**Ned W. High**

### **Certification**

I, the undersigned do hereby certify:

That I am the duly elected and acting secretary of **Princeville at Hanalei Community**, a Hawaii nonprofit corporation; and,

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the petitioners thereof, held on 31st day of March, 1971.

**Ned W. High**  
Secretary

For further information contact:

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Princeville, Kauai, Hawaii 96722  
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The amendments to the following Princeville at Hanalei Community Association By-Laws were duly adopted at a meeting of the members held on the 28th day of June 1997:

Article II, Section 2.b. - amended.  
Article II, Section 2.f. - deleted.

Article XI, Section 1.- amended.