# 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 referred to as the "Declarant".

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.



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.

(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



have the right to cause the necessary work to be done and to have a lien upon the land of the noncomplying 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



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.

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, reconstructed, 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;



(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.

**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:

<u>Land area of lot as weighted</u>

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.



**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 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.

**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 (_ths) 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 (_ths) 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



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 noncompliance 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.

**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**