

or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp  
DEC - 5 2011 ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4, 183C-6)

§13-5-41 Single family residences. (a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen per cent.

(b) ~~Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.~~

(c) No single family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 12/12/94;

## ULU KAPAKA

### DECLARATION OF CONDOMINIUM PROPERTY REGIME

**1.0 DESCRIPTION OF PROJECT.** The Project will consist of the Land and all rights therewith and the structures submitted to the Act.

**1.1 LAND DESCRIPTION.** The Land submitted to the Act is located at Princeville, Kauai, Hawaii and is more particularly described in **Exhibit "A"**.

**1.2 DESCRIPTION OF EXISTING STRUCTURES.** The existing structures submitted to the Act are located as shown on the Condominium Map and are described in **Exhibit "B"**, attached hereto and made a part hereof.

**2.0 DIVISION OF PROJECT.** The Project is hereby divided into ten (10) separate freehold estates. Each freehold estate will be a unit as that term is defined in the Act (and referred to as a "unit" in this Declaration) and includes its appurtenant interest in common elements and limited common elements.

**2.1 THE UNITS.** Each unit is identified by a letter or a letter and a number and is located as shown on the Condominium Map. Each Unit shall have access to Kapaka Street, a public road, directly or through a limited common element, also as shown on the Condominium Map. The units are listed as follows and are more particularly described in **Exhibits "C" and "D"** attached hereto and made a part hereof.

(a) Units with the right as of the date of this Declaration to construct and occupy a single family farm dwelling, subject to the conditions and limitations described in section 7.1 of this Declaration (each such unit referred to herein as a "Farm Dwelling Unit" and collectively as the "Farm Dwelling Units"):

- (i) Unit N1;
- (ii) Unit N2;
- (iii) Unit N3;
- (iv) Unit A; and
- (v) Unit B.

(b) Unit C (also referred to herein as the "Conservation Unit" or "Conservation District Unit") with the right as of the date of this Declaration to apply to construct a single family dwelling in the State land use conservation district, subject to the conditions and limitations described in section 7.3 of this Declaration.

(c) Other units:

- (i) Unit H (also referred to herein as the "Heiau Unit" or the "Po'oku Heiau Unit");
- (ii) Unit O (also referred to herein as the "Overlook Unit");
- (iii) Unit D; and
- (iv) Unit R (also referred to herein as the "Reserve Unit"). Unit R is comprised of two separate portions: a North Portion and a South Portion.

**2.2 STRUCTURES WITHIN UNITS.** Each unit shall include all structures constructed and improvements made by the unit owner on such owner's unit, and all structures and improvements existing on a unit as of the date of this Declaration. Subject to all applicable laws and this Declaration, the By Laws, any rules and regulations adopted by the Board of Directors of the Association of Unit Owners including, but not limited to, House Rules, and the Declaration of Restrictive Covenants and Conditions - Ulu Kapaka, Princeville, Kauai, hereinafter together referred to as the "Ulu Kapaka Governing Documents", each unit owner may alter the improvements located within the owner's unit and construct additional structures and any other improvements within such owner's unit.

**2.3 UTILITY SYSTEMS INCLUDED IN A UNIT.** Each unit shall include that portion of the utility systems which serve solely that unit and is (or are) located fully within that unit.

**3.0 COMMON INTEREST.** Each unit shall have the appurtenant undivided percentage (or fractional) common interest in all common elements of the property (excluding limited common elements) set forth in **Exhibit "E"**, attached hereto and made a part hereof, and the same shall be determinative for all purposes, including the allocation of common expenses, any profits generated by the common elements of the Project, and voting, except where otherwise indicated herein.

(a) Determination of Common Interest Percentages. The percentage common interest for each unit is based on the general rationale that units having the right to

### 1.3 Restrictive Covenants Related to Structures and Site Development.

(a) Design Committee: Review of all Improvements. As further described herein, an Owner must provide the Design Committee with plans and specifications for all Improvements to be constructed on the Land. The Design Committee shall review such proposed Improvements for conformity with the CC&Rs and the Declaration to assure conformity with the Ulu Kapaka design philosophy as hereinafter described. The Design Committee will apply a design philosophy with four basic premises: (i) the Improvements must be of the highest design and construction standards; (ii) the design and architectural style of the Improvements must be consistently applied; (iii) the Improvements must be harmonious with the surrounding topography and natural environment in an effort to minimize the visual impact of Improvements from other Units, the limited common elements, Kapaka Street, the Driveway Element, as designated on the Condominium Map for Ulu Kapaka, including any amendments thereto, being concurrently filed herewith (the "Condominium Map"), and the Hanalei Valley; and (iv) the privacy of each Unit must be strictly observed such that all Improvements are designed with minimal impact (visual, auditory and otherwise) upon other Units.

(b) Permissible Structures. The only structures permitted on the Land are: (i) single-family dwellings as permitted by the Declaration which qualify as farm dwellings as defined in Hawaii Revised Statutes ("HRS") Chapter 205 on the portion of the Land zoned Agriculture and one single-family dwelling on the portion of the Land zoned Conservation; (ii) ancillary structures related to dwellings such as one "guest house" as that term is defined in the Comprehensive Zoning Ordinance of the County of Kauai (hereinafter referred to as the "CZO"), garages, garbage storage sheds, haies, gazebos, covered lanais, landscape features (such as ponds, fountains and swimming pools) and retaining walls; (iii) structures reasonably required to conduct permitted agricultural activities on the Land (e.g., stable for horses); (iv) structures reasonably required to maintain all or a portion of the Land in its natural state; (v) driveways, roads, walls and fencing, as described herein; (vi) structures necessary for drainage, utilities and similar functions; and (vii) temporary construction shelters or facilities maintained for a period not to exceed two (2) years during, and used exclusively in connection with, the construction of the main structure of a dwelling. No ancillary structures described in (ii) above shall be constructed, placed or maintained upon a Unit prior to the commencement of construction of the main structure of the related dwelling.

(c) Building Height. To limit visibility of structures and to maximize a blending of structures with the natural environment, the following height restrictions apply. No dwelling shall be (i) more than two stories above and one story below from the finished grade at the main entry, (ii) over twenty feet measured from the finished grade at the main entry to the highest exterior wall plate line, (iii) over 25 feet to the highest point of the roof measured at each point along the building from the finished grade at the main entry and (iv) for stories below the finished grade at the main entry, over 15 feet from the lowest point of the floor measured at each point along the building to the finished grade at the main entry. The finished grade at the main entry shall not be elevated more than a maximum of four feet from the existing grade. No other

Architect 80, and the like shall be prohibited. Metal roofs may be permitted within the discretion of the Design Committee, which shall take into the consideration the type of metal roofing and its compatibility with the dwelling design. Bright, or highly reflective roofing materials are not permitted. Copper roofs with a dark or green patina are permitted. All roofs of all structures shall be of a subdued green, grey, and brown; no other colors shall be permitted, including but not limited to whites, blues, reds, oranges, as well as bright greens, grays and browns. Solar water systems or, subject to HRS §196-7, solar energy devices may be incorporated in roofing structures if they conform to the color of the roofing material and are not reflective and are not visible from neighboring Units, neighboring limited common elements, Kapaka Street, the Driveway Element or the Hanalei Valley.

(k) Exterior Colors. All structures shall have an earthen tone exterior color, or have a finish of earthen tone color, and be compatible with the surrounding area. As used herein, “earthen tone” means muted colors in the family of brown, beige, or green, which are compatible with surrounding foliage or the surrounding earth.

(l) Screening of Structures. All structures shall be screened with trees, shrubbery, plantings and/or walls (that themselves need not be screened as described in paragraph (n)), so as to prevent visual intrusion of such structures as viewed from the neighboring Unit(s), neighboring limited common elements, Kapaka Street and the Driveway Element. Notwithstanding the foregoing, given the proximity of the buildable area of proposed Units A, B and C of Ulu Kapaka to Kapaka Street, it is understood that such screening may not be complete, but should be designed to minimize visual impact from Kapaka Street. Screening may be located anywhere from the boundary of the Unit to the structure on the Unit.

(m) Visual Impact from the Hanalei Valley. The visual impact of Ulu Kapaka as viewed from Hanalei Valley must be minimized. Accordingly, upon the first disposition of a Unit to a party other than the Declarant or its affiliates, the following limitations will apply to landscaping of the Land along the Hanalei Valley rim (as used in these CC&Rs, generally, the area within 50 feet of either side of the line designated as the “Top of Pali” on the Condominium Map for Ulu Kapaka being concurrently filed herewith) and all structures on the Land visible from Hanalei Valley.

(i) Alteration of Foliage along Hanalei Valley Rim. Foliage along the Hanalei Valley rim in a Unit may be altered only within the limitations described in this romanette (i).

(A) Design Committee Approval Required. Any material alterations to foliage along the Hanalei Valley rim (including, but not limited to, any alterations described in subparagraphs (B) and (C) below) may be effected only with the prior approval of the Design Committee, and shall be subject to and comply with all legal requirements including, but not limited to, requirements applicable to alterations and development within the State Conservation District.

(B) Removal of Individual Items of Foliage. Individual trees or bushes along the Hanalei Valley rim may be removed or materially reduced in

height or scale if they are immediately replaced with trees or bushes, respectively, in the same area that confer the same general impact as those removed in terms of giving the Hanalei Valley rim a varied and natural appearance from Hanalei Valley below. Replacement trees or bushes need not have the same height as those removed, as long as replacement trees or bushes confer the same general impact as those removed in terms of giving the rim a varied and natural appearance from Hanalei Valley below. The Design Committee shall have sole discretion to determine whether such replacement trees or bushes meet the requirements of this section 1.3 (m) and this subparagraph (B).

(C) Other Removal of Foliage. Trees, bushes, or other foliage (collectively and within the meaning of this subparagraph (C) the “foliage”) along the Hanalei Valley rim may be removed or materially altered, other than in conformity with subparagraph (B) above, if, in the sole discretion of the Design Committee, the remaining foliage and replacement foliage (i) maintain the then-existing natural and varied appearance of the Hanalei Valley rim when viewed from the Hanalei Valley below, and (ii) maintain the natural and varied appearance of the Hanalei Valley rim as it existed at the date of the first disposition of the Unit to a party other than the Declarant or its affiliates. The foliage described here may simultaneously satisfy the requirements of this subparagraph and romanettes (ii) and (iii) below, if it otherwise meets the requirements of each of these subparagraphs.

(D) Replacement of Damaged or Diseased Foliage. If non-invasive foliage along the Hanalei Valley rim is destroyed or damaged (e.g., through high winds or hurricanes) or die, the Unit owner shall make reasonable efforts to promptly replace such foliage with foliage meeting the requirements of subparagraph (A) or (B) above.

(ii) Living Space of Dwellings. The living space of any dwelling shall use foliage to obscure and break up the impact of visible portions of the dwelling (e.g., to buffer the otherwise continuous appearance of the dwelling) when viewed from Hanalei Valley. In particular, for any dwelling with living space within 75 feet (directly east) of the line designated as the “Top of Pali” on the Condominium Map for Ulu Kapaka, a foliage grouping must be located every 45 or fewer feet along the dwelling’s living space constructed within 75 feet of the Hanalei Valley rim. Each foliage grouping shall include native trees surrounded by plants of intermediate heights such that the grouping is equal to or exceeds the height of the dwelling as measured on a horizontal plane and is at least 15 feet wide. The foliage described here may be located anywhere between the Hanalei Valley rim and the living space as long as it buffers the visual impact of the dwelling.

(iii) All Other Structures. Any structures other than the living space of dwellings, e.g., garages, tool sheds, and equipment rooms, must be screened by foliage such that they are not visible from the Hanalei Valley.

(iv) Natural Materials. Use of Hawaiian rock walls, such as moss rock, other natural finish materials and additional low foliage to obscure or break up the impact

of visible portions of structures is also encouraged and can substitute for the foliage required by romanettes (ii) and (iii) above.

(v) Design (Review) Committee. In addition to any other information requested by the Design Committee, the Unit owner must provide, if required by the Design Committee, renderings from various perspectives of Hanalei Valley to assist the Committee in assessing the visual impact of the proposed structures and landscaping. (See also section 2.2(c) concerning submission of plans and other information to Design Committee.)

(vi) Routine Maintenance of Foliage. Routine maintenance of foliage permitted under section 2.1, item (iv), is permissible without prior approval of the Design Committee, unless such approval is required by the Design Committee. Notwithstanding the foregoing, in areas along the Hanalei Valley Rim where invasive species have been cut back as shown on the Site Plan Approval (KA-13-30), maintenance to keep the invasive species under control (including weeding, pruning, trimming and mowing) will be conducted by the Association, not the Unit owner. All costs of such maintenance on a Unit will be charged to the Unit owner in the same manner as a common expense.

(vii) Alteration of Foliage below the Hanalei Valley Rim. Foliage on the hillside below the Hanalei Valley rim may be removed on a limited basis with the prior approval of the Design Committee. In general, selected individual trees may be removed if promptly replaced with non-invasive species (e.g., hala), if in the sole discretion of the Design Committee, the objectives of section 1.3 (m), romanette (i) above are satisfied.

Notice is hereby provided that any removal or planting of foliage in the Conservation District must meet all the requirements of State law including, but not limited to, HRS chapter 183C and its implementing administrative rules (including Hawaii Administrative Rules chapter 13-5).

(n) Foliage Barrier on Certain Unit Boundaries. To form a visual barrier and enhance the privacy of the Units entitled to construct dwellings on the Land, each such Unit shall maintain the foliage existing at the time of the first transfer of the Unit to a party other than the Declarant or an affiliate of the Declarant on its side of the boundary between such Unit and the adjacent Units. This foliage may be altered with comparable foliage and other native species with this objective in mind.

(o) Fences and Gates. Fencing and gates along the boundary of a Unit shall not exceed the maximum height permitted by applicable law or rule, or 8 feet, whichever is lower. No fences and gates shall be painted or contain a finish other than earthen tones. Fencing within a Unit allowed a dwelling (herein referred to as a "Dwelling Unit") or within a limited common element as defined under the Declaration shall be screened with hedges and other foliage so as not to be visible to the adjacent Dwelling Units, limited common elements, Kapaka Street or the

(v) Geotechnical Conditions. Each Owner should seek the advice of a licensed engineer to examine and test geotechnical conditions prior to the undertaking of any design or construction of a dwelling or other Improvement. The Declarant makes no representation or warranties expressed or implied, as to the geotechnical condition of the Land.

(w) Swimming Pools, Spas and Water Features. Swimming pools, spas and water features are permissible. When plans for these improvements are submitted to the Design Committee for approval, they must show the location of equipment and piping and include a detailed drainage plan.

(x) Tennis and Sports Courts. Tennis courts and other sports courts are permissible; provided however, (i) any fencing surrounding the courts may not be higher than what is permitted by applicable law or rule, or 8 feet, whichever is lower, (ii) the courts must be screened such that they are not visible from other Dwelling Units, Kapaka Street or the Driveway Element. When plans for these improvements are submitted to the Design Committee for approval, they must include a plan for precluding noise from reaching other Dwelling Units, Kapaka Street or the Driveway Element and visibility from other Units.

(y) Exterior Lighting. Exterior lighting of structures, driveways and landscaping should use low intensity, indirect light sources that are directed downwards. Color lenses are not permitted except in swimming pools. All exterior and landscape lighting plans must be approved by the Design Committee.

(z) Service Areas. Service areas, such as fuel tanks, photovoltaic fields, solar panels, water tanks, garbage cans, air conditioning units and other mechanical equipment must be screened from other Units, limited common elements, Kapaka Street and the Driveway Element. Any noise from the equipment must also be controlled such as not to be heard by neighboring Units, limited common elements, Kapaka Street and the Driveway Element.

(aa) Conservation District Improvements. No Improvements may be constructed in the State conservation district (as designated under the land classification system described in HRS Chapter 205) portion of the Land; except: (i) landscaping; (ii) a single-family dwelling and related structures which are permitted on one unit pursuant to the Declaration (herein referred to as the "Conservation Unit" or "Unit C"); (iii) walls and fences; and (iv) other Improvements with the prior approval of the Board of Directors (herein referred to as the "Board") of the Association of Unit Owners (herein referred to as the "Association") of Ulu Kapaka and the owner of the Conservation Unit. In each of the foregoing, the owner of the unit making such Improvements shall comply with all requirements of State and County law including, but not limited to, administrative rules of the Department of Land & Natural Resources (herein "DLNR") and the requirements of the Ulu Kapaka Governing Documents, including submission of plans for such Improvements to the Design Committee.

#### 1.4 Restrictive Covenants Generally Related to Activities or Uses of a Unit.

(k) Control of Wild Animals. Each Owner shall take reasonable efforts to control wild animals present within their Unit, including rats, chickens and pigs such that those animals are not a nuisance to neighboring Units; *provided however*, this shall not require the Owner to take any action which would violate any law such as those protecting native or endangered species.

(l) Noxious or Offensive Activities. No Owner shall carry out or permit any noxious or offensive activities on the Land, in a Unit or limited common elements appurtenant thereto which will injure the reputation of Ulu Kapaka (herein "the Project"), or do any work or keep anything in a Unit or elsewhere in the Project which will (i) jeopardize the soundness or safety of the Project, or (ii) create a nuisance or interfere with or deprive other owners of the use and enjoyment of any part of the Project, or (iii) reduce the value of the Project, or (iv) increase the rate (unless such owner pays such increase or obtains substitute insurance) or result in the cancellation of fire or liability insurance on the common elements, the Units or appurtenant limited common elements, nor shall anything be done on the Land which may be or may become an annoyance or nuisance to the neighborhood or other Owners. All Owners and occupants shall exercise extreme care about making noise and in the use of musical instruments, radios, televisions, and amplifying equipment that may disturb the neighboring Owners or Units.

(m) Hazardous Materials. No Owner shall cause or permit any hazardous material to be generated, used, transported, stored or disposed of upon, in or about the Land except in a manner that complies with all applicable hazardous materials laws. Without limiting the foregoing, if the presence of any hazardous material caused or permitted by an Owner results in any contamination of the Land or any portion thereof, that Owner shall promptly take all actions at his or her sole expense as are necessary to return the land to the condition existing prior to the hazardous discharge, including but not limited to any clean-up remedial, removal, or restorative work required by any governmental agency having jurisdiction over such matters. Such Owner shall also indemnify, defend and hold harmless other Owners, the Association, the Declarant, its agents and employees, from and against any and all claims, charges, actions, suits, liabilities, obligations, fines and penalties (including, without limitation, claims for property damage; personal injury and wrongful death; foreseeable and unforeseeable consequential damages; punitive damages to the extent permitted by law; costs of investigation, removal, response and remediation; natural and environmental resource damage; governmental administrative actions, and reasonable attorneys' and consultants' fees and expenses), by whomsoever made and howsoever asserted which arise out of, whether directly or indirectly, or relate, whether in whole or in part, to the presence of any hazardous material. This provision and obligation shall survive the termination of the ownership of the offending Owner in the Land.

(n) Use of Firearms. No Owner shall discharge firearms on the Land, Unit or limited common elements appurtenant thereto; *provided however*, nothing herein shall limit the Owner's rights to protect the Land or Unit and its occupants and property.

2.0 Design Committee Approval Required. The right of an Owner to make any Improvement on the Land, including to construct, reconstruct, refinish or alter any structure or

other Improvement upon, under or above the Land, to make or create any excavation or fill thereon, to make any change in the natural or existing surface drainage thereof, to install any exterior wiring for electrical, telephone or other utility lines, television antenna, machines or air-conditioning units, or other equipment or appurtenances whatsoever on any dwelling, building or structure on the Land or the protruding through the walls, windows or roof of any Improvement constructed thereon, is prohibited until and unless the Owner has obtained prior written approval therefore from the Design Committee as herein provided and has otherwise complied with all of the provisions of Section 2.1 and 2.2.

2.1 Approval Not Required for Certain Improvements. Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee for: (i) any interior improvements or alterations which do not alter the basic function of the structures; (ii) any exterior alterations or improvements **which are not material alterations** as determined in the sole discretion of the Design Committee; (iii) any exterior alterations or improvements which are not visible from other Units, appurtenant limited common elements, Kapaka Street, the Driveway Element or Hanalei Valley, as determined in the sole discretion of the Design Committee; (iv) routine maintenance of foliage, including mowing, weeding, and trimming that does not materially alter the appearance of the Hanalei Valley rim from Hanalei Valley below, as determined in the sole discretion of the Design Committee; or (v) simply reconstructing or refinishing in accordance with the color and design of improvements previously approved by the Design Committee. **The Design Committee may delegate its authority under this paragraph to one of its members to act on its behalf.**

2.2 Design Committee Process. Any Owner proposing to perform any work which requires prior approval of the Design Committee, shall apply to the Design Committee for approval thereof as follows:

(a) Submission of Preliminary Plans. The Owner shall submit to the Design Committee for approval prior to commencing such work, three (3) sets of preliminary plans for the proposed work, prepared by a licensed architect, unless otherwise permitted by the Design Committee, and showing in detail with dimensions, the nature of the improvements. The plans shall also indicate the perimeter of the land area which is appurtenant to the improvements for which such approval is sought.

(b) Review of Preliminary Plans. The Design Committee shall review preliminary plans submitted to it within forty-five (45) days after their submission and shall respond to the Owner either with approval or disapproval. In the latter case, the general nature of the objections shall be indicated. Failure to make such response within said forty-five day period shall be deemed to mean that the preliminary plans are approved.

(c) Submission of Final Plans. After receiving approval of the preliminary plans for the proposed work, and still prior to commencement of such work, the Owner shall submit four (4) sets of the final plans and specifications of the proposed work to the Design Committee,