



# The Club at Kukui'ula<sup>SM</sup>

## Membership Agreement

Lot # \_\_\_\_\_

THIS MEMBERSHIP AGREEMENT (“**Agreement**”) is entered into by and between The Club at Kukui'ula, a Hawai'i nonprofit corporation (“**The Club**”) and the undersigned member (“**Member**”).

### PURPOSE AND INTENT

The Club has been organized to provide recreational, cultural, fitness, wellness, agricultural, educational, and civic programs, services, and activities and to own, manage, and control various properties and facilities located within the planned resort community known as Kukui'ula (“**Kukui'ula**”) located in the County of Kaua'i, Hawai'i. Currently, the following are the amenities of The Club: the Kukui'ula Plantation House, the Kukui'ula Spa, the 18-hole championship Kukui'ula Golf Course and related improvements and facilities, and the clubhouse known as the Kukui'ula Golf Club, all of which are hereinafter referred to collectively as “**The Club Amenities**.”

The “**Governing Documents**” for The Club include the following (a) Amended and Restated Covenant for The Club at Kukui'ula (the “**Covenant**”), which provides for the administration of The Club Amenities and any other recreational facilities and amenities and various programs and services within Kukui'ula and establishes the rights and obligations of owners and members of The Club with respect to access, use, and support of the same; (b) the Amended and Restated By-Laws of The Club at Kukui'ula, which govern The Club's internal affairs, such as membership, board powers and duties, etc. (the “**Club By-Laws**”), and (c) the Amended and Restated Club Rules for The Club at Kukui'ula, which contain the policies regulating the conduct of members and use of The Club Amenities (the “**Club Rules**”). A Governing Document for Kukui'ula, which also governs The Club, is the Amended and Restated Community Charter for Kukui'ula (the “**Charter**”), which creates obligations that are binding on the Kukui'ula Community Association and all present and future owners of property in Kukui'ula. The documents described above are dated September 4, 2012, may be further amended and restated from time to time.

By Member's acquisition of a Unit or Units (as defined in the Charter), Member is automatically granted a “Plantation Membership,” in Kukui'ula and such membership is mandatory. This Agreement further defines and confirms the rights and obligations of Member. The Unit or Units owned by Member are individually and collectively referred to in this Agreement as “**Member's Unit**.” In consideration of the mutual covenants set forth in this Agreement, The Club and Member agree as follows:

### TERMS AND CONDITIONS

1. **Type of Membership**. The Club hereby confirms that it has granted to Member a “Plantation Membership” with the ability to upgrade to a “Golf Membership” for additional golf privileges, if selected, paid for by Member and approved by The Club, as each such membership type is specified on **Exhibit A** attached to this Membership Agreement. Both memberships constitute a non-exclusive license to use The Club Amenities in accordance with the privileges of such type of membership as set forth in the recorded Covenant, the Club By-Laws, the Club Rules, and the other policies that The Club adopts, as each may be amended and supplemented from time to time (collectively, “**The Club Governing Documents**”). Kukui'ula Development Company (Hawaii), LLC (“**KDCH**”), is the Declarant under the Covenant. Neither the Membership nor a Golf Membership in The Club is an investment in The Club Amenities and neither provides Member with an equity, ownership, or property interest, or any other interest, in The Club Amenities.

2. **Term of Membership**. The Plantation Membership shall commence on the date that Member acquired title to Member's Unit and shall continue in effect until terminated as provided in The Club Governing Documents at such time as Member no longer owns Member's Unit or any other Unit within Kukui'ula. If Member has elected to acquire a Golf Membership, such Golf Membership shall commence on the date of execution of this

Agreement by both The Club and Member, as set forth under their signatures below, and the Member's payment of the Golf Membership Fee (as defined in the Covenant) and shall continue in effect until terminated as provided in The Club Governing Documents, being such time Member no longer owns Member's Unit or any other Unit within Kukui'ula or sooner in the event of a voluntary termination and resale of the Golf Membership.

**3. Club Assessments.** Member agrees to pay Regular Club Assessments, Special Club Assessments, and minimum usage fees (collectively, "**Club Assessments**"), all of which are defined and described in the Covenant and subject to change from time to time. Member agrees to be responsible for all charges incurred by Member, its Ohana Members and all authorized guests of Member in their use of The Club Amenities. As provided for in the Covenant, the Club Assessment for a Unit in Kukui'ula will be assessed against each Unit owned by Member, whether such Unit is improved with a residence.

Member agrees to pay all Club Assessments on or before the due date thereof. Member understands that delinquency in paying any amounts due may result in late charges, interest on the amount past due until paid at a rate determined by The Club (not to exceed 18% per annum), suspension of membership privileges (including charging privileges for merchandise and any golf privileges), disciplinary actions as reasonably determined by The Club. Member further agrees that if he or she is delinquent in paying any amounts due, The Club shall be entitled to recover from Member late charges, interest, and all costs and expenses which it reasonably incurs in attempting to collect the past due amounts, including attorneys fees and court costs. A lien against Member's Unit secures payment of these amounts and may be enforced to the fullest extent allowed by law as provided in the Covenant.

**4. Receipt of The Club Governing Documents.** By execution below, Member acknowledges receipt, review and understanding of each of The Club Governing Documents and the Schedule of Fees and Assessments currently in effect and agrees to be bound by and comply fully with the terms and provisions of The Club Governing Documents, as they may be amended from time to time, and to be responsible for compliance by the Ohana Members and guests of Member. Member acknowledges that, prior to acquiring Member's Unit, he or she has had the opportunity to review The Club Governing Documents and to seek professional advice to assist in evaluating the merits and risks of acquiring Member's Unit (which includes a mandatory Plantation Membership) and, if elected, the Golf Membership. Member expressly acknowledges that he/she is not relying on any oral representations or marketing materials (including any website) of The Club, KDCH or their respective agents or employees or those of any third parties that may vary from the terms of this Agreement in acquiring Member's Unit and, if elected, a Golf Membership.

**5. Assumption of Risks and Indemnification.**

(a) As a condition of using The Club Amenities, Member agrees to all risks associated with the use of The Club Amenities and agrees to release and indemnify The Club, KDCH, Kukui'ula Community Association and its partners, members, affiliates and its and their heirs, successors, assigns, officers, directors, agents and employees from and against any and all losses, expenses, liens, claims, demands, and causes of action of every kind and character for death, personal injury, property damage or any other liability, damages, fines, or penalties, including costs, attorneys fees and settlements, whether or not based on the acts or omissions of The Club, resulting from, arising out of or in any way connected with the use of The Club Amenities by Member, and the Ohana Members and guests of Members, except to the extent that the same are the direct result of the gross negligence or willful misconduct of The Club. This paragraph shall survive the termination of this Agreement with respect to any property damage, personal injury, or death occurring prior to such termination.

(b) Member, as a condition of using The Club Amenities, and his or her respective the Ohana Members and guests, as a condition of invitation to use The Club Amenities, assume sole responsibility for their personal property. Member acknowledges and understands that The Club shall not be responsible for any loss or damage to any personal property which Member, or his or her Ohana Members or guests, may use or store on The Club premises, whether in lockers or elsewhere. Member also acknowledges and understands that he or she shall be liable and hold The Club and its affiliates harmless for any property damage or personal injury, which Member or his

or her Ohana Members or guests may cause, whether occurring on The Club premises, or at any activity or function which The Club operates, organizes, arranges, or sponsors, regardless of whether such activity or function takes place on The Club premises. If Member or his or her Ohana Members arrange or sponsor any activity or function on The Club premises, Member shall be responsible for any such damage or injury even if Member did not directly or indirectly cause such damage or injury. In such event, Member agrees that The Club may charge the actual cost for repair of any such damage to his or her club charge account or designated credit card.

6. **No Vested Interest.** Member acknowledges that in acquiring a Membership, Member acquires only a non-exclusive license to use The Club Amenities in accordance with this Agreement and The Club Governing Documents and in common with such other persons as The Club may authorize from time to time. Member acknowledges that he or she acquires no ownership or vested rights in or to The Club Amenities nor any right to participate in the management or control of The Club or The Club Amenities, except as expressly provided for The Club Governing Documents.

7. **No Transfer and Assignment of the Membership.** Member acknowledges that the membership conferred hereunder may not be pledged or assigned but instead must be surrendered upon any transfer of the Member's Unit or at least 25% interest in the entity holding title to Member's Unit, as provided in The Club Governing Documents and no portion of the Initiation Fee shall be refunded to Member. The Club By-Laws describe the transferability of the Membership upon the death, separation, or divorce of Member or if Member is an entity, upon the death, separation, or divorce of the owner of Member.

8. **Member Designee.** If Member is a legal entity, the entity will designate, at the time of execution of this Agreement, the individual to exercise the privileges of the Plantation Membership in The Club ("**Designee**"). The Designee assumes all of the obligations of Member under The Club Governing Documents. Member and the Designee are jointly and severally liable for all assessments, dues, and other charges incurred on account of the Membership. Member may change the Designee only once in any 12- month period, except that such limitation shall not apply to the designation of a new Designee upon the death of the prior Designee (with no change in ownership of Member). Each new Designee shall be subject to approval by The Club, and payment of a change of Designee fee in such amount as The Club may establish from time to time. The Club reserves the right to charge the Initiation Fee or to disapprove the Designee if the change in Designee is related to a transfer of Member's Unit through a change in ownership of the entity (*e.g.*, an assignment of the shares of stock to a third party if Member is a corporation). Upon the death of the Designee (with no change in ownership of the Member), Member will have the ability to change the Designee in accordance with procedures set out in the Club By-Laws. An approved Designee will be entitled to exercise all of the privileges of the Membership in accordance with the rights of the Membership held by the designating Member, unless and until otherwise specified by written notice from Member to The Club. A Designee will be subject to the same rules and limitations and will be entitled to the same guest privileges as Members under The Club Governing Documents. The Designee will be primarily responsible for and will be billed directly for all assessments and personal charges. The Designee will also be the party designated in the records to receive all communications regarding The Club. Notwithstanding the above, Member will be responsible for payment of all assessments and charges that are not paid by the Designee.

9. **Additional Terms and Conditions.** Additional terms and conditions applicable to Member and the membership issued hereunder are set forth on **Exhibit A** to this Agreement and incorporated by this reference.



The Club at Kukui'ula<sup>SM</sup>

MEMBER ACKNOWLEDGES THAT HE OR SHE IS ACQUIRING A (MANDATORY) PLANTATION MEMBERSHIP FOR THE SOLE PURPOSE OF OBTAINING SOCIAL BENEFITS AND RECREATIONAL USE OF THE CLUB FACILITIES WHILE THE MEMBER OWNS ANY UNIT WITHIN KUKUI'ULA. MEMBER UNDERSTANDS THAT THERE IS NO REFUND FOR ANY INITIATION FEE (REGARDLESS OF WHETHER IT WAS PAID BY KDCH OR ANOTHER DEVELOPER, OR WAIVED). THE ONLY FINANCIAL BENEFIT THAT IS TO BE PAID TO ANY MEMBER WHO IS ALSO A GOLF MEMBER OCCURS UPON SURRENDER OF HIS OR HER GOLF MEMBERSHIP AND SUBSEQUENT SALE OF A GOLF NEW MEMBERSHIP BY THE CLUB IN THE TIME AND MANNER SET FORTH IN THE CLUB GOVERNING DOCUMENTS.

**This Agreement shall not be binding upon The Club unless and until the approved and accepted by The Club as evidenced by its signature below. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Hawai'i without giving effect to principles of conflicts of law.**

**If the Member is married, a civil union partner, or a reciprocal beneficiary, the signatures of both Member and spouse, domestic partner, or reciprocal beneficiary are required.**

[THE REST OF THE PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]



The Club at Kukui'ula<sup>SM</sup>

IN WITNESS WHEREOF, The Club and Member have caused this Agreement to be executed on their behalf as of the date set forth below.

**THE CLUB:**

The Club at Kukui'ula,  
a Hawai'i non-profit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER\* (if an individual):**

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name of Member's Spouse\*\*)

\_\_\_\_\_  
(Signature of Member's Spouse)

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER\* (if an entity):**

\_\_\_\_\_  
(Entity Name)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Printed Name and Title)

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Designated Individual ("Designee")\*:**

\_\_\_\_\_  
(Printed Name of Designee)

\_\_\_\_\_  
(Signature of Designee)

Address: \_\_\_\_\_

Date: \_\_\_\_\_

*\*The contact information provided above for Member and the Designee, if applicable, shall be shared with the Kukui'ula Community Association and used for its communication purposes, as well, unless otherwise notified in writing to the contrary once every calendar year\*\* "Spouse" also refers to a domestic partner and a reciprocal beneficiary.*

  
**The Club at Kukui'ula<sup>SM</sup>**

**EXHIBIT "A"**

**Additional Terms and Conditions**

**Membership.** The Membership hereunder is a mandatory Plantation Membership; however, the applicant may choose in its sole election to apply for and purchase a Golf Membership indicated by the parties' initials below:

**1. Initiation Fee (Initial applicable paragraph (s) only)**

The Initiation Fee payable upon the execution of this Agreement currently Seventy-Five Thousand Dollars (\$75,000.00), which is subject to change in accordance with The Club Governing Documents.

**Initials by Member:** \_\_\_\_\_/\_\_\_\_\_

**2. Golf Initiation Fee. (Initial applicable paragraph (s) only)**

*(Optional) Golf Membership privileges issued pursuant to The Club Governing Documents:*

The Golf Initiation Fee payable upon the execution of this Agreement for the Golf Membership is currently Seventy Five Thousand Dollars (\$75,000.00), which is subject to change in accordance with The Club Governing Documents. If Member elects to purchase the Golf Membership at a later date, it does so with the knowledge that a Golf Membership may no longer be available and will be subject to the then current Golf Initiation Fee in effect at that time.

**Initials by Member:** \_\_\_\_\_/\_\_\_\_\_

**1. Monthly Assessments. (Initial applicable paragraph(s))**

The monthly Regular Club Assessments payable from the date of Member's acquisition of each Member's Unit is One-Thousand Three Hundred Eighteen Dollars and Forty Two Cents (\$1,318.42) per month, (\$15,821.04 annually) per Unit, which is subject to change in accordance with The Club Governing Documents.

**Initials by Member:** \_\_\_\_\_/\_\_\_\_\_

***(Optional) Golf Membership privileges issued pursuant to The Club Governing Documents:***

In addition to the above-described Regular Club Assessments, a Golf Member is also obligated to pay the monthly assessment for the Golf Membership. The monthly assessment for the Golf Membership (payable from the date of this Agreement or at the time of purchase of a Golf Membership, if at a later date) is currently Five-Hundred Twenty Seven Dollars and Thirty Seven Cents (\$527.37) per month (\$6,328.44 annually), which is subject to change in accordance with The Club Governing Documents.

**Initials by Member:** \_\_\_\_\_/\_\_\_\_\_

**4. Personal Information\*:**

*\*Please refer to The Club's Privacy Policy posted to the Community Portal regarding our limited and respectful use of your personal information in connection with The Club's operations (and in limited situations and pursuant to The Club Governing Documents, the Kukui'ula Community Association's operations) only. Mahalo.*

(a) Member or Designee's Name: \_\_\_\_\_

(b) Birth Date: \_\_\_\_\_ Email: \_\_\_\_\_ Phone: \_\_\_\_\_

(c) Spouse's/Designee's Spouse's Name: \_\_\_\_\_

(d) Birth Date: \_\_\_\_\_ Email: \_\_\_\_\_ Phone: \_\_\_\_\_

(e) Purchased Property Address\*: \_\_\_\_\_

