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R-875

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

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/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

LAND COURT

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Wendelin L. Campbell, Esq.  
Campbell & Campbell  
P.O. Box 6844  
Kamuela, Hawaii 96743

FIRST AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KALIHIWAI RIDGE

This Amendment is made this 9th day of August, 1993, by the undersigned owners of lots within Kalihiwai Ridge Subdivision, Kilauea, Island of Kauai, State of Hawaii, hereinafter called the "Subdivision", being at least 66.6% of the owners of the lots in the Subdivision, hereinafter called the "Undersigned Owners";

W I T N E S S E T H :

WHEREAS, C. BREWER PROPERTIES, INC., a Hawaii corporation, hereinafter called "Declarant", executed that certain Declaration of Protective Covenants, Conditions and Restrictions dated October 3, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22452 at Page 429, hereinafter called the "Declaration" affecting Phase I of the Subdivision consisting of certain of the Lots shown on File Plan 1934, filed in the Bureau of Conveyances of the State of Hawaii; and

WHEREAS, Phase II consisting of certain of the Lots shown on File Plan 2053, filed in the Bureau of Conveyances of the State

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of Hawaii was amended that the subdivision and made subject to the protective covenants, conditions and restrictions of the Declaration by that certain Annexing Declaration And Declaration of Restrictive Covenants dated November 7, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-155979 and Annexing Declaration dated March 17, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-045028, hereinafter collectively called the "Annexing Declaration"; and

WHEREAS, the Declaration therefore affects all of that certain real property located within the Subdivision; and

WHEREAS, the Declaration provides that the provisions affected by this amendment may be amended at any time, or from time to time, by recordation in the Bureau of Conveyances of an instrument signed by at least 66.6% of the owners of the lots in the Subdivision; and

WHEREAS, the Undersigned Owners represent at least 66.6% of the owners of the lots in the Subdivision; and

WHEREAS, the Exhibit B to the Declaration and Annexing Declaration indicates that only one (1) "Single Family Residence" can be constructed on Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed in the Bureau of Conveyances of the State of Hawaii and Lot 11 of Phase II being Lot 11, as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii; and

WHEREAS, the Declaration's definition of the term "Single Family Residence" provides that a single guest facility designed to accommodate no more than three (3) temporary guests, which does not include a kitchen or kitchen facilities, and which does not exceed 500 square feet in size, may be included as a part a "Single Family Residence"; and

WHEREAS, subsequent to the recordation of the Declaration, the County of Kauai enacted a Ordinance No. 551 known as the Additional Dwelling Unit Ordinance, which ordinance was codified in Section 8-26.1, Kauai County Code 1987, as amended, hereinafter sometimes called the "Ohana Ordinance", which permits the construction of one additional single family dwelling in lieu of a guest house on other than residentially zoned lots; and

WHEREAS, the Undersigned Owners desire to amend the Declaration to provide that, pursuant to the Ohana Ordinance, an additional dwelling unit may be constructed on Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed in the Bureau of Conveyances of the State of Hawaii and Lot 11 as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii in lieu of a guest facility, provided that said construction conforms with the covenants, condition and restrictions of the Declaration, as hereby amended, and all County of Kauai zoning ordinances and building codes; and

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WHEREAS, it is most efficient and desirable to have this Amendment executed in counterparts so that, when at least 66.6% of the Owners have signed the same, it can be recorded in the Bureau of Conveyances of the State of Hawaii in order to effectively amend the Declaration as provided herein;

NOW, THEREFORE, the Undersigned Owners hereby amend the Declaration by adding the following provisions thereto:

1. Article I entitled "Definitions" is hereby amended to add the following definition at the beginning of that Article:

1.0 Additional Dwelling Unit. "Additional Dwelling Unit" means an additional single family residential dwelling as the same is defined by Kauai County Additional Dwelling Unit Ordinance No. 551, which ordinance was codified in Section 8-26.1, Kauai County Code 1987, as the same is or has been amended from time to time.

2. Section 1.28 entitled Single Family Residence of the Declaration is hereby amended to add the following language at the end of said section:

"Provided, however, that, with respect to Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed in the Bureau of Conveyances of the State of Hawaii and Lot 11 as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii only, "Single Family Residence" may include an Additional Dwelling Unit, in lieu of the aforesaid single guest facility as long as such Additional Dwelling Unit is constructed pursuant to and in conformance with the Kauai County Additional Dwelling Unit Ordinance No. 551, as amended from time to time and Section 6.21 of this Declaration, as amended from time to time."

3. Section 6.21 is hereby amended to add the following language at the end of said section:

"In the event that an Owner elects to construct an Additional Dwelling Unit on Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed with the Bureau of Conveyances of the State of Hawaii and Lot 11 as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii as provided by Sections 1.00 and 1.28 and of this Declaration, then, in such event, the construction of such an Additional Dwelling Unit shall be subject to all terms, conditions, restrictions and requirements contained in this Declaration, as amended

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from time to time and in the Environmental Design Rules and Guidelines adopted pursuant to the Declaration (the "Environmental Design Rules") for improvements within the Subdivision, including, without limitation, the 1,500 square foot minimum floor area for all dwellings and the requirement of Kalihiwai Ridge Environmental Committee approval, as well as the following additional limitations:

- A. The maximum floor area of each Additional Dwelling Unit shall be no greater than 1,600 square feet; provided, however, that in the event that the Kalihiwai Ridge Environmental Committee determines, in its sole discretion, that due to the proposed design of the Additional Dwelling Unit or certain features of the Lot upon which it is to be constructed, a proposed Additional Dwelling Unit with greater than 1,600 square feet is compatible with its surroundings and the adjacent parcels and otherwise qualifies under the Environmental Design Rules, then in such event, the Kalihiwai Ridge Environmental Committee may approve an Additional Dwelling Unit having greater than 1,600 square feet.
- B. The dwelling located closest to the Subdivision roadway, whether it be the Additional Dwelling Unit or the Single Family Dwelling, shall be limited to a single story in height; provided, however, that in the event that the Kalihiwai Ridge Environmental Committee determines, in its sole discretion, due to either the proposed design of the dwelling or certain features of the Lot upon which said dwelling is to be constructed, that a split level or two story dwelling can be located closest to the Subdivision roadway in a manner which makes it aesthetically desirable, then in such event, as long as said dwelling complies with the Environmental Design Rules, the Kalihiwai Ridge Environmental Committee may approve said dwelling. At the time of the submission to the Kalihiwai Ridge Environmental Committee for approval of construction of the first residence on Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed with the Bureau of Conveyances of the State of Hawaii and Lot 11 as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii, the owner shall submit such information to the Environmental Committee as reasonably requested to establish whether this provision will apply to the residence in question and, upon request, the Owner of said Lots shall execute any document reasonably requested by the Environmental Committee to guarantee that further construction will be in conformity to the intent and of this explicit provision. This Agreement shall not be construed as representing, warranting or agreeing in any fashion that

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the Environmental Committee will approve of any dwelling containing more than one story, and all height limitations and all design criteria contained in the Declaration and Environmental Design Rules shall apply to each and every improvement constructed on Lots 1, 2, 3, 4, and 15 as shown on File Plan 1934, filed with the Bureau of Conveyances of the State of Hawaii and Lot 11 as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii."

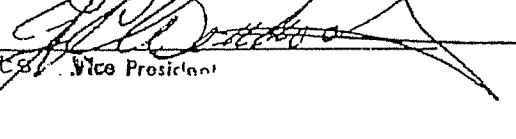
Except as amended herein, the Declaration shall remain in full force and effect.

The parties hereto agree that this instrument can be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this  9th  day of  August , 1993.

C. BREWER PROPERTIES, INC.

By   
Its  Sr. Vice President

By   
Its  Vice President

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STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 9th day of August, 1993,  
before me appeared Craig Champion and  
G. C. Wentworth, to me personally known,  
who, being by me duly sworn, did say that they are  
Senior Vice President and Vice President,  
respectively, of C. BREWER PROPERTIES, INC., a Hawaii  
corporation; that the seal affixed to the foregoing  
instrument is the corporate seal of said corporation; that  
said instrument was signed and sealed in behalf of said  
corporation by authority of its Board of Directors; and  
that said officers acknowledged the instrument to be the  
free act and deed of said corporation.

Stephanie A. Marques L.S.  
Notary Public  
State of Hawaii  
My Commission expires 02/10/96