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C BREWER PROPERTIES, INC  
P O Box 1825  
Honolulu, Hawaii 96805

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P O Box 1825  
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429

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KALIHIWAI RIDGE

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS, KALIHIWAI RIDGE

THIS DECLARATION is made this 3<sup>rd</sup> day of October, 1988, by C. BREWER PROPERTIES, INC., a Hawaii corporation, whose principal place of business is 827 Fort Street, Honolulu, Hawaii 96813 and whose post office address is P. O. Box 1826, Honolulu, Hawaii 96805, hereinafter referred to as the "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant owns certain real property in Kalihiwai, Hanalei, Island and County of Kauai, State of Hawaii; and

WHEREAS, Declarant intends to convey said real property subject to certain restrictions which, to the extent possible, will enhance the agricultural potential of the area, will preserve and protect the natural environment and aesthetic values of the area, will encourage uses of the real property consistent with these goals, including but not limited to, the cultivation of crops, the raising of livestock, aquaculture activities and other similar uses, and will permit the continued enjoyment of the natural resources of said real property by the owners thereof;

NOW, THEREFORE, Declarant hereby declares that all of the real property now or hereafter included in Kalihiwai Ridge, as hereinafter defined, shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, all of which are established and declared for the purpose of enhancing the agricultural potential and preserving the natural attractiveness of said real property and for the mutual benefit of the owners thereof. The covenants, conditions and restrictions set forth in this Declaration shall run with said real property and shall be binding upon all persons acquiring any right, title or interest in and to said real property, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of any part of Kalihiwai Ridge, and each successor in interest of such owner.

ARTICLE I. DEFINITIONS.

The following words when used in this Declaration, unless the context otherwise specifies or requires, shall have the following meanings:

1.1 Amending Declaration. "Amending Declaration" means any declaration of protective covenants, conditions and restrictions Recorded pursuant to Section

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14.2 hereof whose purpose is to amend the terms of this Declaration.

1.2 Annexing Declaration. "Annexing Declaration" means any declaration of protective covenants, conditions and restrictions Recorded pursuant to Article XII hereof whose purpose is to annex to the Real Property additional real property.

1.3 Architect. "Architect" means a Person licensed to practice architecture in the State of Hawaii or a Person licensed to practice civil or structural engineering in the State of Hawaii.

1.4 Articles of Incorporation. "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 415B of the Hawaii Revised Statutes, as amended.

1.5 Association. "Association" means the Kalihiwai Ridge Community Association, a non-profit Hawaii corporation, and its successors and assigns.

1.6 Association Property. "Association Property" means all real and personal property owned by or leased to the Association.

1.7 Board. "Board" means the Board of Directors of the Association.

1.8 By-Laws. "By-Laws" means the By-Laws of the Association.

1.9 Common Area. "Common Area" means any Lot owned by or leased to the Association and any easements, rights of way or other property rights owned or held by the Association, together, in each case, with all Improvements thereon or made in connection therewith.

1.10 Declarant. "Declarant" means C. Brewer Properties, Inc., its successors and assigns, including such other Person or Persons whom said C. Brewer Properties, Inc. may, by a Recorded document, designate as having the powers and functions of Declarant, or some of such powers and functions.

1.11 Declaration. "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as the same may from time to time be amended.

1.12 Environmental Design Rules. "Environmental Design Rules" means the Kalihiwai Ridge Environmental Design Rules and Guidelines referred to in Section 9.13 hereof, which establish certain standards and procedures for the approval and construction of Improvements within Kalihiwai Ridge, as the same may be amended from time to time.

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1.13 Family. "Family" means (a) a husband and wife, together with all of said or their parents and unmarried children, all of whom shall be related by blood, marriage, or legal adoption, and domestic servants maintaining a common household within Kalihiwai Ridge; (b) one (1) or two (2) individuals, together with his or her or their respective parents and unmarried children, all of which parents and children shall be related to such individuals by blood, marriage or legal adoption, and domestic servants maintaining a common household within Kalihiwai Ridge; or (c) a group of not more than three (3) individuals not constituting a Family as provided in (a) or (b) above and their unmarried children, together with their domestic servants maintaining a common household within Kalihiwai Ridge.

1.14 Improvements. "Improvements" means all buildings, outbuildings, landscaping, grading, roads, driveways, parking areas, fences, retaining walls and other walls, hedges, poles, plantings, planted trees, Subdivision Improvements, and any other structure or Improvements of any type or kind.

1.15 Invitee. "Invitee" means any employee, tenant, or guest of an Owner, including transient guests; and any Person who is not an Owner and who has acquired any title or interest less than the fee simple title to a Lot by, through or under an Owner, including a lessee, licensee or mortgagee and any employee, tenant or guest of any such Person.

1.16 Kalihiwai Ridge. "Kalihiwai Ridge" means the Real Property and all buildings and other Improvements now or hereafter located on the Real Property and all Association Property.

1.17 Kalihiwai Ridge - Phase I. "Kalihiwai Ridge - Phase I" means all of the land described in Exhibit "A" attached hereto, together with all rights and interests appurtenant thereto, and together also with all buildings and other Improvements now or hereafter located thereon.

1.18 Kalihiwai Ridge Environmental Committee. "Kalihiwai Ridge Environmental Committee", "Environmental Committee" or "Committee" means the Kalihiwai Ridge Environmental Committee established pursuant to Article IX hereof.

1.19 Lake Lot. "Lake Lot" means any Lot designated as such in an Annexing Declaration, during such time that such Lot is part of the Common Area.

1.20 Lot. "Lot" means a portion of the Real Property which is a lot as shown on a Recorded Subdivision map, other than roadways.

1.21 Member. "Member" means any Person who is a member of the Association pursuant to Article III hereof.



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1.22 Notice of Nonconformance. "Notice of Nonconformance" means a written notice by the Kalihawai Ridge Environmental Committee which may be Recorded against an Owner's Lot and which discloses that Improvements on an Owner's Lot have not been approved, that any such approval has been revoked, that such Improvements have not been completed in accordance with approved plans and specifications and other materials, that such Improvements have not been completed within the appropriate time period, or that such Improvements have not been maintained in accordance with this Declaration and the Environmental Design Rules.

1.23 Owner. "Owner" means any Person (including Declarant) who is, or any persons who are, jointly or in common, the record owner of the fee simple title to any Lot. An Owner may assign all or a portion of his rights and privileges hereunder and delegate all or a portion of his duties and obligations hereunder as provided in Section 2.4 below. The By-Laws shall provide for the determination of who is the Owner of any Lot.

1.24 Person. "Person" means a natural individual, corporation, partnership or any other legal entity.

1.25 Points. "Points" are numerical figures assigned to each Lot to fix the proportionate share of the total assessments levied by the Association to be borne by the Owner of that Lot, the proportionate voting power of the Owner of that Lot in the Association and the proportionate interest of the Owner of that Lot in distributions made by the Association. Each Lot owned by the Association and each roadway Lot shall have no (zero) Points assigned. Each other Lot shall be assigned one (1) Point. "Total Points" at any time means the sum of all the Points then assigned to Lots in Kalihawai Ridge.

1.26 Real Property. "Real Property" means all of the land described in Exhibit "A" attached hereto and all of the land annexed thereto pursuant to Article XII hereof, together with all buildings and other Improvements now or hereafter located thereon and all rights and interests appurtenant thereto.

1.27 Record. "Record, Recorded and Recordation" means with respect to any document the recordation or filing of such document in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

1.28 Single Family Residence. "Single Family Residence" means a residential dwelling or dwelling complex designed to accommodate no more than one Family and no more than three (3) temporary guests. A single guest facility per Lot which is designed to accommodate no more than three (3) temporary guests, which does not contain a kitchen or kitchen facilities, and which does not exceed 500 square feet in size, may be included as part of one such Single Family Residence on the Lot.

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1.29 Subdivision. "Subdivision" means a parcel of real property divided or separated into lots as shown on a subdivision plan approved pursuant to the subdivision ordinances of the County of Kauai, or the procedure of so dividing or separating real property.

1.30 Subdivision Improvements. "Subdivision Improvements" means all water lines and facilities, drainage culverts and other drainage facilities, roadways, utility lines and facilities, including electric, telephone and communications lines and facilities, irrigation lines and facilities, and other infrastructure improvements serving or for the benefit of Kalihiwai Ridge.

1.31 Visible from Neighboring Property. "Visible from Neighboring Property" means, with respect to any given object or activity, that such object or activity is or could be in a line of sight originating from any point six feet above any ground level existing on any adjoining property, including roads.

## ARTICLE II. CONTROL OF REAL PROPERTY USE.

2.1 Goals. This Declaration, together with any and all rules and regulations promulgated pursuant hereto, is intended to accomplish the goals of enhancement of the agricultural potential of Kalihiwai Ridge, and preservation and protection of the natural environment of Kalihiwai Ridge, by establishing criteria and guidelines for the ordered growth, development, improvement and use of Kalihiwai Ridge, including, but not limited to, the following:

Structure Siting:

to protect views from all Lots within Kalihiwai Ridge, to maintain the rural character of the area, to minimize disturbance of the natural land forms and vegetation patterns of the area.

Architectural Style:

to establish a harmonious character to buildings by allowing subtle individuality without discordant diversity of architectural style.

Agricultural Development:

to encourage uses of the land that are consistent with the capability of the area, and ensure that the uses do not create noxious or unsafe conditions for other Owners and Lots within Kalihiwai Ridge.

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Drainage: to provide protection for land (soil) and Improvements both on-site and off-site.

Landscaping: to maintain the natural foliage, and where possible, improve the appearance of individual parcels in particular and the area in general; to avoid disturbance of the existing ground cover insofar as practicable; to ensure that man-made structures and Improvements are properly screened from view from neighboring property or public roads.

Conflicts of Use: to provide guidelines that minimize proposed uses of adjacent parcels that may be incompatible.

2.2 Approval by Kalihiwai Ridge Environmental Committee. No new Improvement may be constructed, nor may any existing Improvement be materially altered on any Lot, except in accordance with plans, specifications and other materials approved by the Kalihiwai Ridge Environmental Committee and in accordance with the applicable Environmental Design Rules. The Kalihiwai Ridge Environmental Committee shall not approve any use for a Lot or portion of a Lot which is inconsistent with the provisions of this Declaration.

2.3 Construction of Subdivision Improvements. Notwithstanding any provisions to the contrary contained in Section 2.2 hereof, or elsewhere in this Declaration, any work performed on any Lot by Declarant, its representatives, agents, employees, or contractors in connection with the construction, repair, maintenance, operation or improvement of Subdivision Improvements required by the County of Kauai pursuant to the grant of Subdivision approval for any Lots within Kalihiwai Ridge, or with the construction, repair, maintenance, operation or improvement of any other roadways, irrigation systems, electrical, telephone, communication, water or other utilities, shall be permitted without the prior written approval of the Kalihiwai Ridge Environmental Committee, and Declarant, its representatives, agents, employees or contractors may proceed with work on any such Improvements without complying with the provisions of Article IX hereof.

2.4 Assignment of Rights or Obligations. An Owner may assign all or a portion of his rights and privileges under this Declaration or delegate all or a portion of his duties and obligations under this Declaration to another Person and may enter into any arrangement with such other Person under which such Person

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shall agree to assume some or all of such Owner's obligations under this Declaration. The Association shall recognize any such assignment or delegation of rights or arrangement for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing and shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations under this Declaration of an Owner arising during the period he is an Owner.

### ARTICLE III. THE ASSOCIATION.

3.1 General Purposes and Powers. The Association has been or will be incorporated to be and constitute the Association to which reference is made in this Declaration. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Articles or By-Laws.

3.2 Membership. Each Owner, by virtue of being an Owner and for so long as he is an Owner, shall be a Member of the Association. The Declarant shall also be a Member of the Association until Declarant's right to annex additional real property without the consent of the Owners expires as provided in Section 12.2 hereof.

3.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee composed of not fewer than three (3) Directors. At the first annual meeting of the Association, one-third (1/3) of the Directors shall be elected to a three (3) year term; one-third (1/3) of the Directors shall be elected to a two (2) year term; and one-third (1/3) of the Directors shall be elected to a one (1) year term. Thereafter, at each annual meeting, Directors elected to succeed those whose terms expire shall be elected for a term of three (3) years. The number and qualifications of Directors shall be as provided in the Articles and By-Laws of the Association. At any election of the Board of Directors, every Member entitled to vote may cumulate his votes and give any one or more candidates a number of votes equal to the numbers of directors to be elected multiplied by the number of votes to which his Lot(s) entitle him, or may distribute his votes on the same principle among as many candidates as he desires.

#### 3.4 Voting Rights.

3.4.1 Class A Voting Rights. Each Member other than Declarant shall have Class A voting rights and shall have one vote for each Point assigned to his Lot. Voting by proxy shall be permitted. In the

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event of multiple Owners of the same Lot all such multiple Owners shall be Members, and the vote(s) for such Lot shall be exercised as such multiple Owners may themselves determine, but in no event shall more than the designated number of votes be cast with respect to such Lot, nor shall fractionalized voting be allowed. Such multiple Owners shall, prior to each meeting of Owners, provide the Board with a written statement, signed by each such multiple Owner, designating one Person who shall have the right to cast the votes assigned to the Lot owned by such multiple Owners, and in the event that such multiple Owners shall fail to designate such Person to cast the vote(s) assigned to such Lot, no Person shall be entitled to cast the vote(s) assigned to such Lot. Subject to the Owners' rights to assign or delegate all or a portion of their rights as Members, the right to vote pursuant to this Section 3.4.1 may not be severed or separated from any Lot, and any sale, transfer or conveyance of fee interest in any Lot to a new Owner or Owners shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

3.4.2 Class B Voting Rights. Declarant shall have Class B voting rights and shall have one vote so long as it shall be a Member of the Association as provided in Section 3.2 hereof, in addition to one vote for each Point assigned to Lot(s) which it owns. In all other respects there shall be no difference between Class A and Class B voting rights.

3.5 Notices. Each Member shall be entitled to notice of any meeting at which such Member has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Such notices shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party if sent in accordance with the provisions of Section 14.14 hereof.

3.6 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions of Section 3.4 hereof to the contrary, the Owners of record on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days nor less than ten (10) days prior to the date on

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which the particular action requiring determination of Members is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which notice of such meeting is first given to any Member shall be deemed the record date for the meeting.

3.7 Quorums. The presence of Members who hold votes equal to one-quarter (1/4) of the total voting power of the Association, in person or by proxy, at a meeting to consider a matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration, the Articles or the By-Laws, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

3.8 Articles and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provision of this Declaration, the provisions of this Declaration shall govern.

3.9 Notification of Association. Each Owner shall within ten (10) days of any sale, transfer or conveyance of the fee simple title to the Owner's Lot notify the Association of such sale, transfer or conveyance.

#### ARTICLE IV. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

4.1 Association Rights in Lots. The Association shall have the right to enter upon any Lot for the purpose of enforcing this Declaration.

4.2 Maintenance of Association Property. The Association shall be obligated to provide for the care, operation, management, maintenance, repair and replacement of Association Property. Without limiting the generality of the foregoing, said obligations shall include keeping Association Property in good, clean, attractive and sanitary condition, order and repair; obtaining and maintaining insurance as required by Section 10.1 hereof; repairing wind and other damage caused by the elements; and making necessary or desirable alterations, additions, betterments or Improvements to or on Association Property.

4.3 Labor and Services. The Association may obtain and pay for the services of any Person to manage its affairs, or any part thereof, to the extent it deems advisable, as well as the services of such other personnel, including independent contractors, as the Association

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shall determine to be necessary or desirable for the proper operation of Kalihiwai Ridge or the Association, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts. The Association may delegate to such Person any of its powers except the powers to levy assessments; execute contracts involving \$2,500 or more or the performance of work or services which will not be completed within 60 days; and the power to sell, convey, mortgage or encumber any Association Property without prior approval of the Board.

4.4 Association Functions. The Association may undertake or contract for any lawful activity, function or service for the benefit of the Owners. In addition to the Assessments described in Article V hereof, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners shall be assessed to the Owners benefited thereby, and such assessments shall be enforced in accordance with the provisions of Article V hereof. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder. The activities, functions or services undertaken or contracted for by the Association shall include, without limitation, the providing of legal and accounting services necessary or desirable in connection with the enforcement of this Declaration; the granting or conveying of easements or rights of way over, across, along or under any real property of the Association; and the enforcement of all rights granted to the Association in any lease, easement or other instrument.

4.5 Personal Property of Association. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

4.6 Real Property of Association. The Association shall accept fee simple title to or a leasehold interest in all real property, and such other easements, rights of way and other property rights from time to time conveyed to it by Declarant, provided that the Association need not accept any such real property subject to a lien upon such real property securing or evidencing an obligation to pay money except a lien for nondelinquent real property taxes and assessments.

4.7 Rules and Regulations. The Association or any Person contracted with by the Association to manage the Association and Association Property may make, alter, and enforce and from time to time rescind reasonable and uniformly applied rules and regulations, not in conflict with the provisions of this Declaration, governing the use of Lots and of Association Property. Such rules and regulations may, without limitation: (i) regulate use and enjoyment of Association Property; (ii) regulate the burning of open fires; (iii) regulate agricultural practices within Kalihiwai Ridge, including, but not limited

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to regulations, limitations and restrictions which interpret and/or implement the requirements set forth in Section 6.20 hereof; (iv) prohibit noxious or offensive activity, nuisances, unsafe or hazardous activities or construction, emission of loud sounds or offensive odors and unsightliness; (v) reasonably restrict or limit Owners' rights to use Association Property; (vi) regulate the use of Association Property by Invitees; and (vii) establish a schedule of fines and penalties for violations of such rules and regulations or the provisions of this Declaration, provided, however, that if an Owner commences construction of any new Improvement, or commences material alterations on any existing Improvement, without first obtaining the approval of the Environmental Committee, such Owner shall be subject to the minimum fine provided for in Section 9.16 below.

The Association shall furnish each Owner with a written copy of each and every rule or regulation adopted pursuant to this Section 4.7; however, failure to furnish said copy shall not be deemed to invalidate said rules or regulations to any extent.

The Association, acting through its Board of Directors or through a committee or agent appointed by the Board, shall have the right to enforce any of the rules and regulations of the Association and the obligations of any Owner under this Declaration or any provision of the Articles or By-Laws by having the Association assess a reasonable fine against such Owner (including the minimum fines provided for in Section 9.16 below) and/or suspend the right of such Owner to use Association Property and/or suspend the right of such Owner to vote at meetings of the Association; provided that such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation; provided further that if any such violation continues for a period of ten (10) days after notice of such violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. If any such fine imposed on an Owner by the Association is not paid by said Owner within fifteen (15) days after said Owner has received from the Association written notice of the imposition of such fine, then the amount of such fine shall be added to the amount of the Regular Assessment charged to said Owner and payment thereof shall be immediately enforceable in the same manner as payment of an overdue Assessment may be enforced in accordance with Article V hereof. No penalty may be imposed under this Section 4.7 until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has, in writing or otherwise as herein provided, waived such right. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing; provided, however, that the failure of any Owner to appear at a hearing, the notice of which has been delivered to such Owner no less than thirty



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(30) days prior to such hearing shall constitute a waiver of such Owner's right to be heard prior to imposition of penalties against such Owner. All fines imposed and collected by the Association shall be deposited into the general fund of the Association and shall thereafter be used for the benefit of the Association and its Members generally. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

No Owner's Invitees shall violate the rules and regulations adopted from time to time by the Association, the provisions of this Declaration, or any provision of the Articles or By-Laws, whether relating to the use of Lots, the use of Association Property, or otherwise and any such violation by any Owner's Invitees shall be treated as a violation by such Owner and shall be enforceable in accordance with the provisions hereof.

The foregoing remedies shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of this Declaration, including, without limitation, Declarant's right to enforce this Declaration as provided in Sections 13.1 and 13.2 hereof, and the enforcement rights provided for in Sections 6.30 and 7.7 hereof, and the imposition of any fine or the suspension of voting rights shall not preclude the Association, the Declarant, the Environmental Committee, or any Owner from pursuing or obtaining any other available remedies.

4.8 Association Right to Charge Fees. The Association may charge reasonable fees for the use of Association Property.

4.9 Dedication of Land. Subject to any other restrictions or easements of record, the Association may dedicate, grant easements in or transfer any part of the Common Area to any public agency, authority or public or private utility.

4.10 Real Property Taxes. The Association shall pay all property taxes and assessments levied on any portion of Association Property. The Association may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application of any taxes or assessments.

4.11 Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

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ARTICLE V. ASSESSMENTS.

5.1 Assessments. Each Owner, or, in the event of multiple Owners of the same Lot, such multiple Owners jointly and severally, shall be obligated to, and shall, pay to the Association amounts as hereinafter provided based on each Point assigned to the Lot(s) owned by such Owner(s), which amounts are herein called "Assessments". Assessments shall include "Regular" and "Supplementary" Assessments.

Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Owner shall comply with all such determinations.

5.2 Determination of Budgets and Assessments. The fiscal year of the Association shall be the calendar year. The amount to be raised by Regular Assessments for any fiscal year or partial fiscal year shall be determined in the following manner. Prior to the annual meeting of the Members of the Association, the Board shall prepare or cause to be prepared and approve a budget for the fiscal year or partial fiscal year showing, in reasonable detail, the estimated operating costs and expenses which will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry over reserve for the next fiscal year (the "Operating Budget"). The Board shall subtract from the Operating Budget the amount equal to the anticipated surplus attributable to Assessments collected but not disbursed in the fiscal year or partial fiscal year immediately preceding the fiscal year or partial fiscal year for which the Operating Budget has been prepared; provided that in lieu of such subtraction the Association may elect to refund to the Owners said anticipated surplus. The Board shall furnish a copy of the budget to each Owner at or prior to the annual meeting of the Members of the Association, and upon approval by the Members of the budget, Regular Assessments shall be apportioned as provided in Section 5.5 below. Until such time as the Regular Assessments for the fiscal year are determined as provided above, Members will pay estimated Regular Assessments at the same rate as the previous fiscal year or partial fiscal year, provided that upon determination of the amount of the actual Regular Assessments for the fiscal year, the difference between the actual and estimated Regular Assessments theretofore paid shall be immediately paid by or refunded to the Members.

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If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amount of such Regular Assessments for any fiscal year or partial fiscal year or if the Members of the Association shall disapprove of the Operating Budget, then the amounts of Regular Assessments shall be deemed to be the amount assessed in the previous fiscal year or partial fiscal year.

Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

5.3 First Assessments. Regular Assessments for the first partial fiscal year of the Association shall be \$50.00 per Point, assessed to each Owner as provided in Section 5.5 hereof as a Regular Assessment as of the date of the sale by Declarant of the first Lot to be sold in Kalihiwai Ridge. Declarant shall be responsible for the Assessments on Lots which it owns. All costs and expenses incurred prior to such sale shall be the sole responsibility of Declarant.

5.4 Supplementary Assessments. In addition to Regular Assessments, the Association may levy Supplementary Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying any expense incurred or to be incurred as provided in this Declaration, including the acquisition of Association Property and any costs of capital improvement to Association Property; or (ii) to cover the deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined and assessed by the Association. If the aggregate amount of Supplementary Assessments levied in any of the first five full calendar years of the Association exceeds Five Hundred Dollars (\$500.00) per Point, or if the aggregate amount of Supplementary Assessments levied in any calendar year thereafter exceeds Seven Hundred Fifty Dollars (\$750.00) per Point, then such Supplementary Assessment may not be levied without the prior approval of Owners holding fifty-one percent (51%) of the Class A voting rights in person or by proxy at a meeting duly called for the purpose of authorizing such Supplementary Assessment.

5.5 Apportionment of Assessments. The amount of the Regular or Supplementary Assessment for any fiscal period payable by an Owner for each Point assigned to the Lot(s) owned by such Owner shall be computed by multiplying the total amount to be raised by such Assessments by a fraction, the numerator of which shall be one and the denominator of which shall be the Total Points assigned to all Lots in Kalihiwai Ridge.

5.6 Time for Payments. The amount of any Regular or Supplementary Assessment shall become due and

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payable thirty (30) days after notice of the amount due as to such Regular or Supplementary Assessment shall have been given by the Association to the Owner of the Lot against which the Assessment is payable and the amount of any other charge, fine, penalty, or other amount payable with respect to any Owner or such Owner's Invitees or Lot, shall become due and payable as specified by the Board and, in any event, not more than fifteen (15) days after any notice of the amount due as to such other charge, fine, penalty or other amount shall have been given by the Association to such Owner. All such amounts shall bear interest at a rate of one percent (1%) per month, but in no event greater than the maximum amount permitted by law from the date due and payable until paid.

**5.7 Lien for Assessments and Other Amounts.** If an Owner does not pay in full any Assessment, charge, fine, penalty, cost, expense or other amount payable to the Association hereunder, or any installment thereof, or any interest accrued thereon, when due, the Owner shall be deemed to be in default and, upon Recording a notice of default describing the Lot owned by the defaulting Owner, the Association shall have a lien against such Lot to secure payment of any such Assessment, charge, fine, penalty, cost, expense or other amount due and owing to the Association with respect to the Owner or with respect to such Owner's Invitees or Lot, plus interest from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Hawaii. The foregoing remedies shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of such obligations, including, without limitation, the right of the Association to suspend such Owner's voting rights as provided in Section 4.7 above.

**5.8 Estoppel Certificate.** Upon payment of a reasonable fee and upon written request of any Owner the Association shall furnish a written statement setting forth the amount of Assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner, the Lot owned by such Owner and such Owner's Invitees and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

**5.9 Liability of Owners and Purchasers.** The amount of any Assessment, charge, fine or penalty owing to the Association by any Owner under this Declaration shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

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ARTICLE VI. USE RIGHTS AND RESTRICTIONS.

6.1 Owners' Rights in Association Property. The rights of Owners to use Association Property shall be subject to this Declaration, the Articles, the By-Laws, the Environmental Design Rules, and the rules and regulations of the Association.

6.2 No Imperiling of Insurance. No Owner and no Owner's Invitees shall do anything or cause anything to be kept in or on Association Property or any Lot which might result in an increase in the insurance premiums of insurance obtained by the Association or which might cause cancellation of such insurance, without the prior written consent of the Association.

6.3 No Violation of Law. No Owner and no Owner's Invitees shall do anything or keep anything in or on Association Property or any Lot which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

6.4 Subdivision and Consolidation of Lots. No two or more adjoining Lots shall be consolidated and/or developed as one Lot, nor shall any Lot be divided or subdivided or a fractional portion thereof conveyed or otherwise transferred so as to be held in divided ownership, whether by subdivision, establishment of a condominium property regime, establishment of a land trust, or otherwise, without the prior written approval of the Kalihiwai Ridge Environmental Committee. Any Owner or Owners seeking such approval shall submit to the Environmental Committee a suitable map, prepared by a licensed surveyor, showing the proposed consolidation, subdivision or other division, together with such other materials relating to the proposed consolidation, subdivision or other division as the Environmental Committee shall request, and a reasonable fee as required by the Environmental Committee. The Environmental Committee shall review such map and other materials to determine whether or not the proposed consolidation, subdivision or other division complies with the intent, purposes and goals of the Declaration including the occupancy limitations hereinafter set forth, and to determine whether or not any Owner or Owners of Lots within Kalihiwai Ridge will be prejudiced as a result of such consolidation, subdivision or other division, and the Environmental Committee shall automatically disapprove of any consolidation, subdivision or other division which fails to comply with the intent, purposes and goals of the Declaration or which increases the allowed occupancy of the affected Lots. The Environmental Committee shall approve or disapprove the consolidation, subdivision or other division within sixty (60) days after such map and other materials have been submitted to it, and in the event of disapproval, shall give written notice of the reasons therefor. If the Committee shall fail to approve or disapprove the proposed consolidation, subdivision or

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other division within said sixty (60) day period, the Person or Persons applying for said approval shall notify the Committee in writing of its failure to timely approve or disapprove, and if the Committee thereafter fails to send notice of disapproval within fifteen (15) days after receipt of such written notice, the Committee shall be deemed to have approved of the requested action. Upon the request of the Owner of any Lot for which a consolidation, subdivision or other division has been approved, the Environmental Committee shall furnish to such Owner, a certificate reflecting such approval. Easements created or established by Declarant along the common boundary line of Lots for which consolidation has been approved by the Environmental Committee may be changed provided that the consents of Declarant and the Association are obtained and provided that alternate easements are granted or created, satisfactory to Declarant and the Association, by the Owner of the consolidated Lots. If easements are changed along the common boundary line of combined parcels, the combined parcels shall thereafter be deemed one Lot, and may not thereafter be split and developed as two Lots. Upon final approval by the appropriate governmental authority of any permitted consolidation or subdivision of any Lot(s), each Lot resulting from such consolidation or subdivision shall be deemed a "Lot" within the definition of Section 1.20 herein and shall be assigned Points as provided in Section 1.25 herein, according to the designation resulting from such consolidation or subdivision.

6.5 Condominiums and PUDS. No Lot shall be made subject to any declaration of condominium property regime, declaration of restrictive covenants or similar instrument or document without the approval by Declarant of such declaration, instrument or document and on written consent of Declarant to such document.

6.6 Timesharing. No Lot shall be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time-interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess any Lot or any interest therein rotates among various Persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

6.7 Occupancy Limitations. No Lot shall be improved except with one or more Single Family Residences as hereinafter provided and structures necessary or incidental to residential and agricultural use, approved by the Environmental Design Committee as herein provided. No Single Family Residence on any Lot shall be used for

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living purposes ~~legal transactions~~. The Single Family Residence was designed to accommodate pursuant to plans approved by the Kalihiwai Ridge Environmental Committee. No portion of any Lot, other than the portion on which the permitted Single Family Residence(s) are situated, shall be used as a residence or for living purposes. No mobile home, trailer home, portable building, shed, quonset hut, tent, or similar structure shall be used as a residence or for living purposes on any Lot.

The maximum number of Single Family Residences which may be constructed and maintained on a Lot shall be as set forth in Exhibit B attached hereto and made a part hereof or in the Annexing Declaration by which such Lot is made subject to this Declaration, but in all events shall be no more than the maximum number of Single Family Residences allowed under the applicable zoning ordinances or approved by the County of Kauai Planning Department. In addition, a single guest facility may be constructed appurtenant to one such Single Family Residence per Lot, as described in Section 1.28 above, in accordance with the applicable zoning ordinances.

6.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to other Owners. Any plantings or vegetation which cannot be effectively limited from infesting neighboring property shall be deemed a noxious activity, and each Owner shall take positive steps to eliminate such plantings or vegetation from his Lot. Noxious activities shall also include the failure to properly care for animals raised or kept on a Lot, and the improper use of herbicides or pesticides upon a Lot, and each Owner shall take positive steps to eliminate or cure any such improper care of animals or use of herbicides or pesticides. The Kalihiwai Ridge Environmental Design Rules may more fully define noxious or offensive activities and may limit, control or prohibit such activities.

6.9 No Hazardous Activities. No activities shall be conducted on any Lot and no Improvements constructed on any Lot which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except: (a) in a contained barbecue unit while attended and in use for cooking purposes; (b) for agricultural burning under conditions approved by the District Fire Marshall; or (c) within a safe and well-designed interior fireplace. Whenever any flammable or combustible materials of any type are stored upon any Lot, the Owner thereof shall keep and maintain in working order, adequate fire extinguishing equipment.

6.10 No Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality

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of the foregoing: (a) all unassigned structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view so as not to be Visible from Neighboring Property; (b) all agricultural, garden or maintenance equipment and all tractors and trucks of more than one-half ton capacity shall be kept at all times in an approved enclosed structure or screened from view so as not to be Visible from Neighboring Property, except when in actual use; (c) refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an approved enclosed structure or appropriately screened from view so as not to be Visible from Neighboring Property; (d) service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view so as not to be Visible from Neighboring Property; (e) pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage and disposal systems or devices shall be kept and maintained within an approved enclosed structure or below the surface of the ground unless otherwise approved in writing by the Kalihiwai Ridge Environmental Committee; (f) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an approved enclosed structure or appropriately screened from view so as not to be Visible from Neighboring Property; (g) no trailer, vehicle or boat shall be constructed, reconstructed, repaired or maintained upon any Lot in such manner that such construction, reconstruction, repair or maintenance is Visible from Neighboring Property, nor shall any vehicle not in good operating condition be placed, kept or maintained upon any Lot so as to be Visible from Neighboring Property, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage or maintenance building; and (h) no garage or accessory building shall be used for other than the parking of vehicles, farm machinery and implements or boats, unless the same is enclosed by a partition, wall, door, or screen normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage or accessory building not so enclosed shall be used for a laundry or for storage purposes or as a hobby shop or carpenter shop.

6.11 Noise. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Lot and Improvements thereon, or except as approved in writing by the Kalihiwai Ridge Environmental Committee, shall be placed or used upon any Lot. Continued use of any such permitted sound devices shall be subject to any limitations and conditions established from time to time by the Environmental Committee. No sound shall be permitted to



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be emitted on any Lot which is unreasonably loud or annoying. The Environmental Design Rules may more fully define sounds which are unreasonably loud or annoying, and may limit or control any activities causing such sounds.

6.12 Light; Lighting Fixtures. No light shall be emitted from any Lot which is unreasonably bright or which causes unreasonable glare. All exterior lighting (including, without limitation, lighting for tennis courts or other recreational facilities, security lighting devices used exclusively to protect the Lot and Improvements thereon, and lighting for night work where such night work is necessary to guard against loss of crops or livestock) shall conform to the Environmental Design Rules. The Environmental Design Rules may prohibit exterior use, inter alia, of mercury vapor lamps or lamps which emit light of a similar character, fluorescent lamps, neon lamps and neon tubing, flashing lights or lamps, unshielded lights, colored lights and spotlights. In addition to complying with the Environmental Design Rules, all light sources which are Visible from Neighboring Property, except for temporary lighting in emergency situations, must be approved by the Kalihiwai Ridge Environmental Committee.

6.13 Odors. No odor which is noxious or offensive to others shall be emitted on any Lot. The Environmental Design Rules may more fully define noxious or offensive odors, and may limit or control any activities causing such odors.

6.14 Support of Adjacent Lot. In the event of any excavation on a Lot, the Owner of such Lot shall provide such artificial support as is necessary to support adjacent Lots.

6.15 Outbuildings, Trailers and Temporary Structures. No temporary buildings or structures, out-house sheds, trailers or tents, except for Declarant's temporary sales offices, trailers, tents or other temporary structures necessary in connection with any permitted construction, shall be erected, placed or permitted to remain on any Lot. No garage, shed, trailer, mobile home, tent, temporary building, or partially completed building shall be used for human habitation.

6.16 Animals. Except for dogs, cats and other typical household pets kept in reasonable numbers and under reasonable conditions, no animal shall be kept or maintained on any Lot except with the approval of the Environmental Committee, which shall have the power to control in accordance with the standards set forth below and other uniformly applied standards from time to time adopted by the Environmental Committee, the kinds of animals which may be kept or maintained on a Lot, the numbers of each type of animal which may be kept or maintained on a Lot, and the conditions under which such animals may be kept or maintained, including, without limitation, the kind of structures or enclosures in which

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such animals may be kept. All animals kept or maintained on a Lot, whether domestic pets, livestock, poultry, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of aquaculture or other processes; (c) control of flies, insects, worms and other pests; (d) adequate fencing and animal housing facilities adequate to restrict such animals and poultry to the Lot where maintained; (e) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind.

6.17 Signs. All signs erected or maintained on any Lot shall comply with all applicable County and State laws, ordinances and regulations and no signs or advertising devices of any nature shall be erected or maintained on any Lot except: one subdivision identification sign established by Declarant; subdivision for sale signage established by Declarant; such signs as may be required by legal proceedings; signs having a combined total face area of not more than 1-1/2 square feet, necessary to identify the ownership of the Lot and its address; not more than one sign not more than 1-1/2 feet by 2 feet in size necessary to show that the Lot on which it is situated is for sale or for rent; signs necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; one job identification sign per contractor or subcontractor having a maximum surface of six square feet during the period of actual construction on a Lot; not more than one commercial sign having a maximum face area of six square feet, which sign refers only to the sale of agricultural or related products produced on the Lot on which it is situated; and such other signs as may be otherwise required by law. No sign shall be directly illuminated or shall be higher than six feet above the ground elevation. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Lot only with the prior written approval of the Kalihiwai Ridge Environmental Committee, which approval shall be given only if such signs shall be professionally prepared, shall be of attractive design in keeping with the overall character of the area, shall be as small in size as is reasonably possible, and shall be placed or located as directed or approved by the Kalihiwai Ridge Environmental Committee.

6.18 Mining and Drilling. No mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth shall take place on any Lot.

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6.19 Clearing and Grading. The clearing and grading of any Lot shall be performed only in strict accordance with plans and specifications therefor which have been approved by the Kalihiwai Ridge Environmental Committee, and such clearing and grading shall not alter or impede existing drainage patterns without the prior approval of the Kalihiwai Ridge Environmental Committee; provided, however, that such approval shall not be necessary for temporary disturbance of the surface of the land for the cultivation of crops, which results in the removal of earth or rock for a depth of not more than twenty-four (24) inches, in accordance with the provisions of Section 6.20 herein. No wanton cutting or desecration of existing trees on any Lot will be permitted, and preservation of large, established trees will be a consideration of the Kalihiwai Ridge Environmental Committee in approving or disapproving plans for construction or alterations of Improvements on a Lot. All areas cleared shall be left clear of rubbish and litter, and approved ground vegetation shall be reestablished. All grading operations shall exercise dust control measures, and the areas graded shall be replanted with grass or ground cover as approved by the Kalihiwai Ridge Environmental Committee immediately upon completion of grading or cultivated with crops.

6.20 Cultivation of Crops. All cultivation of crops, whether for personal or commercial use, shall be conducted only on locations designated on site plans for such activity, which have been approved by the Kalihiwai Ridge Environmental Committee, and shall be conducted in conformance with good farming practices, including, but not limited to, adequate provision for: (a) control of dust; (b) use of sprays, pesticides, insecticides, and other chemical insect control or fertilizing measures in accordance with all governmental regulations concerning such use, and in such manner as not to create a hazard or nuisance to any other Lot or Owner; (c) prompt control and removal of weeds, noxious or waste vegetation; (d) prompt disposal of excess plant material, or placement of same in an established compost pile maintained in a neat farmer-like manner; (e) control of water to prevent any flooding, erosion of, or deposit of silt on, adjoining land; (f) control of any planting near boundaries of Lots to prevent or eliminate unreasonable invasion of adjoining land by roots and/or branches of such plantings; (g) affirmative soil conservation practices to assure the continued fertility of the soil, including but not limited to measures to avoid the erosion of, the deposit of silt on, or the accumulation of deleterious chemicals in the soil; and (h) protection of all ground and surface water sources, from contamination or the introduction of deleterious chemicals or substances.

6.21 Structure Limitations. Structures on all Lots shall be located inconspicuously so as to be unobtrusive on the landscape. Each Single Family Residence constructed on a Lot shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the Single Family

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Residence. To protect views and to insure a blending of structures with the natural environment, no structure or other improvements may be erected which has either a height exceeding 30 feet, measured vertically from the existing ground elevation at all points, or a height exceeding 35 feet, measured from the highest point on the structure or other improvement to the lowest point of the contact thereof with the finished grade; provided, however, that notwithstanding compliance with the foregoing height limitations, the Kalihiwai Ridge Environmental Committee shall have the power to deny approval of any structure or improvement on a Lot which substantially impairs views from adjoining Lots; provided further that subject to the approval of the Kalihiwai Ridge Environmental Committee, certain minimal structural features such as chimneys or roof overhangs may be permitted to exceed the foregoing height limitations if the Committee determines that the views of adjoining Lots will not be substantially impaired.

6.22 Prohibition Against Used Buildings and Materials. No used building shall be placed on any Lot, nor shall any used lumber or materials be a part of construction of any improvement thereon. Notwithstanding the generality of the foregoing, antique or aged materials may be used in the construction of improvements with the approval of the Environmental Committee.

6.23 Power Lines, Antennae and Similar Structures, Wiring. No overhead power lines shall be erected on any Lot except by the Declarant or by a public or private utility authorized to do so by the Declarant. No wind generators shall be erected on any Lot. No antennae, aerials, satellite discs or other devices for the reception or transmission of radio or television broadcasts or other means of communication shall be erected or maintained on any Lot without the prior approval of the Environmental Committee.

No wiring for electrical or telephone installations, television antennae, security systems, air conditioning units, appliances, machines or similar devices shall be permitted on the exterior surface of any improvement or shall protrude through the walls or roof of any improvement, except as expressly permitted by the Environmental Committee.

6.24 Disposal of Sanitary Waste. No outside toilet shall be constructed on any Lot. All plumbing fixtures, toilets or sewage disposal systems shall be connected to a septic tank, cesspool or other sewage system approved by the appropriate governmental authorities.

6.25 Architectural Design Criteria. The overall visual character of Kalihiwai Ridge shall be one of natural materials, natural textures, natural colors and forms compatible with those occurring in the natural landscape of the area.

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6.26 Construction Period. During the course of actual construction of any structure or Improvement permitted hereunder up to a maximum period of twelve (12) months or such longer period approved in writing by the Kalihiwai Ridge Environmental Committee, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary to permit such construction, provided that such construction is carried out with all due diligence and that during the course of such construction, nothing is done which will result in a violation of any of said provisions, covenants, conditions and restrictions upon completion of construction. All construction activities shall be conducted in compliance with rules and regulations adopted by the Kalihiwai Ridge Environmental Committee.

6.27 Flooding and Erosion. No Owner shall construct or permit to be constructed on his Lot any Improvement which will create a problem of flooding, erosion or interference with natural water flow or original runoff pattern damaging to his Lot or adjacent properties, nor shall any Owner fail to act so as to minimize runoff damage or interference with the natural flow of storm waters. Each Owner shall provide for the installation of such culverts and drainage facilities upon his Lot as required by the Environmental Committee. Each Owner shall keep all such drainage facilities and culverts so installed on his Lot, as well as any other drainage facilities and culverts located on his Lot, free and unobstructed and in good repair.

6.28 Chemicals. The Kalihiwai Ridge Environmental Committee shall have the power, in its sole discretion and from time to time, to prohibit the use and storage of chemicals which it shall determine, in its sole discretion, to be toxic or hazardous. No chemical so prohibited shall be used on, in, above or under any Lot, nor shall any such chemical be allowed to seep, drain, flow, drift or migrate into any natural or artificial waterway, drainage channel, or above ground or underground body of water within, on, or under the Real Property, or into, onto, or above any Lot. Neither the Design Committee or its members, nor the Declarant, nor any officer, agent or employee of any of the same shall be responsible, liable or accountable for any such prohibition of the use or storage of such chemicals or for the failure to prohibit the use or storage of such chemicals.

6.29 Maintenance of Lots. Each Lot, whether occupied or unoccupied, and all Improvements placed thereon, shall at all times be maintained in good, clean and attractive condition and in such a manner as to prevent such Lot and Improvements from becoming unsightly, unsanitary or a hazard to health. Without limiting the generality of the foregoing, each Owner shall, at his own expense, (a) keep his Lot free from rubbish and litter; (b) restore and repair all damage and destruction caused by casualty to his Lot or any Improvement thereon; (c)

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maintain, cultivate and keep in good condition all shrubs, trees, grass, lawns, plantings and other landscaping originally located on or from time to time placed upon his Lot; (d) trim and restrain all trees, shrubs and plantings so that they shall not exceed applicable height limits, if any, set by the Environmental Committee or overhang or otherwise encroach upon, any walkway or street, unless prior approval of the Environmental Committee is obtained; (e) maintain in good condition and repair all drainage improvements located on or from time to time placed upon his Lot; (f) maintain in good condition and repair and adequately paint or otherwise finish to Environmental Design Rules specifications all fences located on or from time to time placed on his Lot; (g) maintain all paved surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter; and (h) maintain all slope areas upon his Lot. As used in this Section 6.29, the term "Lot" shall include not only the Lot but also the land in the road right-of-way located between the Lot boundary and the paved portion of the roadway abutting the Lot.

6.30 Enforcement of Use Restrictions. In the event of any failure by a Lot Owner to observe and perform all of the terms and conditions of this Article VI, including, without limitation, the terms and conditions of Section 6.29 above, Declarant, the Environmental Committee, or the Association, may, upon thirty (30) days prior written notice to such Lot Owner (the "Defaulting Lot Owner"), maintain, restore or repair such Lot and such Improvements, the cost of which shall be reimbursed (together with interest thereon at the rate of one percent (1%) per month) by the Defaulting Lot Owner. The Declarant, the Environmental Committee, or the Association who maintains, restores or repairs such Lot or Improvements for the Defaulting Lot Owner shall have a lien against the Defaulting Lot Owner's Lot to secure such reimbursement and payment of interest, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. The foregoing remedy shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of such obligations. Neither Declarant nor the Environmental Committee, nor the Association, nor any of their officers, directors, members, agents, employees or contractors shall be liable for any claim for damage which may result from any maintenance, restoration or repair work performed hereunder, provided that the Person against whom the claim is made has, upon the basis of such information as may be actually possessed by him, acted in good faith and without willful or intentional misconduct.

6.31 Owner-Caused Damage. If, due to the act or neglect of an Owner or such Owner's Invitees, loss or damage shall be caused to any Association Property, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has

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legal transactions. waived its rights to subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner, and such amount shall be secured by a lien on the Lot of such Owner in accordance with the provisions of Section 5.7 of this Declaration.

#### ARTICLE VII. REGULATION OF LAKE LOTS

7.1 Ownership. Within one year after any Lot is designated as a Lake Lot by an Annexing Declaration, Declarant will convey to the Association title in fee simple determinable to such Lot, free and clear of all encumbrances, except such easements, rights and interests as then appear of Record, and such other reservations and conditions as Declarant may at the time of such conveyance reserve or impose, including but not limited to (a) a reservation of water rights unto the Declarant or any affiliate of Declarant, or any public or private utility or governmental agency, or (b) a restriction that the estate conveyed to the Association shall automatically expire at such time that the Lot conveyed is no longer used for recreational purposes for all Members of the Association or at such time as this Declaration shall expire, whichever is earlier. Each Lot designated by this Declaration or any Annexing Declaration as a Lake Lot shall be subject to the restrictions set forth in this Article VII only during such time as, and for so long as such Lot is owned by the Association.

7.2 Care and Control of Lake Lots. In order to ensure the full enjoyment of Lake Lots to the Owners and in order to prevent improper use of Lake Lots and to provide for the proper care and maintenance thereof, the Association shall control the use of each Lake Lot in accordance with this Declaration and with any rules and regulations adopted interpreting or implementing the provisions of this Declaration, shall provide for the necessary care, maintenance, and operation of each Lake Lot, and shall impose reasonable Assessments on every Lot as provided in Article V hereof, to provide necessary funds to pay the cost of such care, maintenance and operation, including without limitation all taxes and premiums for hazard and liability insurance incurred in respect to each Lake Lot.

7.3 Regulation of Boating. The operation of all boats, including every description of watercraft used or capable of being used as a means of transportation on water, on or upon any body of water located within a Lake Lot, shall be subject to the following restrictions:

7.3.1 The operation or use of any boat exceeding eighteen (18) feet in length is prohibited.

7.3.2 The operation or use of any boat powered by combustion engine or by gasoline or similar fuels is prohibited.

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7.3.3 Boats shall not be operated at speeds in excess of five miles per hour and all boats must be operated in a manner that will minimize disturbance to other users of the Lake Lot. Careless boat handling, including the creation of a hazardous wake or surge, is prohibited.

7.3.4 No boat shall be moored, anchored or stored overnight in, on, or upon any Lake Lot; provided however that Owners of Lots adjoining a Lake Lot shall be permitted to moor, anchor or store boats at such docks, piers, wharfs, slips, landings, boat-houses, mooring facilities, or other Improvements which have been constructed, made, placed and/or maintained in or appurtenant to a Lake Lot in accordance with plans and specifications which have been approved by the Kalihiwai Ridge Environmental Committee, pursuant to the requirements set forth in Article IX hereof.

7.3.5 All boats operated or used within a Lake Lot shall be equipped with appropriate lifesaving devices for all passengers of such boats. The lifesaving equipment shall at all times be kept in good and serviceable condition for immediate and effective use and shall be placed as to be readily accessible.

7.3.6 Water skiing is prohibited.

7.3.7 No building, repair, reconstruction or renovation of boats shall be carried on or performed on or appurtenant to any Lake Lot.

7.3.8 No boat or other floating vessel shall be used for any residential purpose within the boundaries of any Lake Lot.

7.3.9 The operation of boats within Lake Lot shall not be permitted to create a nuisance or disturbance to Owners of any Lots.

7.4 No Dumping or Littering. No grass or hedge clippings, leaves, branches, trees, waste or scraps of any kind, garbage, sewage, debris, sand, soil, refuse, chemicals, rubbish, or other gaseous, liquid or solid materials whatsoever except authorized fill which has been approved by the Kalihiwai Ridge Environmental Committee, shall be dumped, placed, thrown, deposited or discharged into a Lake Lot. No fill, including banks, bulkheads and other retaining structures, shall be placed in any body of water located within a Lake Lot, except within the established boundaries of any Lot other than the Lake Lot in accordance with plans therefor which have been approved by the Kalihiwai Ridge Environmental Committee, and no refuse, rubbish or waste materials shall be used for such fill.

7.5 Introduction of Species of Animals. No fish, game, other marine life, or other species of animal shall be introduced into, propagated or disseminated in a



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Lake Lot; provided however that the Association may permit the introduction of fish, game, or other marine life into a Lake Lot by the Association, upon the recommendation of the Kalihiwai Ridge Environmental Committee. In determining whether to recommend the introduction of such species of animal into a Lake Lot, the Environmental Committee shall consider the following:

- (a) whether the species proposed to be introduced would threaten the existence and stability of any indigenous species as predator, competitor for food, cover, or breeding sites, or in any other way arising from its characteristics and ecological requirements;
- (b) the availability of socially acceptable methods of eliminating the species or keeping it under control in the Lake Lot and adjoining areas;
- (c) the extent to which the species will enhance the use and enjoyment of the Lake Lot by the Owners;
- (d) whether there is a foreseeable risk of conflict on account of the introduction of such species with land use policies in the area.

7.6 Improvements. No fences, bulkheads, groins, docks, piers, wharves, breakwaters, canals, slips, landings, pilings, cuts, fills, dredging, boathouses, mooring facilities or other Improvements whatsoever shall be constructed, made, placed or maintained in or appurtenant to any Lake Lot or any part thereof except in strict accordance with complete plans and specifications therefor which have been approved by the Kalihiwai Ridge Environmental Committee, pursuant to the requirements set forth in Article IX hereof. Such Improvements other than mooring facilities generally shall be permitted only within the boundaries of the Lot to which they are appurtenant. All boathouses, docks, piers and landings shall be of finished construction and no makeshift boathouses or boat coverings shall be erected, placed or maintained on or appurtenant to any Lot, nor shall any unfinished boathouses or other Improvements be used or permitted to remain thereon in such condition. Building setbacks for buildings or structures other than approved boathouses, docks, piers, landings, and other mooring facilities located on Lots adjoining a Lake Lot shall be established by the Kalihiwai Ridge Environmental Committee.

7.7 Maintenance and Repair. The Owner of each Lot adjacent to a Lake Lot shall be responsible for the care and maintenance of such Lot and any appurtenant mooring area within the boundaries of his Lot and also of all adjacent land outside of such boundaries to the water's edge of any body of water located within a Lake Lot, in a neat and attractive condition, suitably planted and free from weeds and debris, and shall at his own

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legal transactions, expense, well and upatant in repair, maintain, amend and keep all bulkheads, walls, banks, pilings, boathouses, docks, piers, landings, mooring facilities and other Improvements on or appurtenant to such Lot, including without limitation the dredging of any slips thereon, with all necessary reparations and amendments whatsoever. In case the Owner of any Lot adjacent to a Lake Lot shall fail to maintain such Lot, adjacent land or any Improvements thereon or appurtenant thereto as herein provided, the Association, the Environmental Committee, or the Declarant may, but shall not be obligated to, upon thirty (30) days notice to such Owner, perform any such maintenance and repair as it deems advisable, and may remove, store or dispose of any such Improvement that the Environmental Committee or the Declarant deems unfit for repair or dangerous to persons, property or navigation and all costs and expenses thereof shall be payable by such Owner to the Association, the Environmental Committee or the Declarant who performs any such work, together with interest thereon at a rate of one percent (1%) per month. The Association, the Environmental Committee or the Declarant who performs any such work shall have a lien against the defaulting Lot Owner's Lot, to secure the reimbursement of such costs and expenses and payment of interest, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. The foregoing remedy shall be in addition to any other remedies provided herein or available at law or in equity for enforcement of such obligations. Neither the Declarant, nor the Environmental Committee, nor the Association, nor any of their officers, directors, members, agents, employees or contractors shall be liable for any claim for damage which may result from any maintenance, repair, removal, storage or disposal work performed hereunder, provided that the Person against whom the claim is made has, upon the basis of such information as may be actually possessed by him, acted in good faith and without willful or intentional misconduct.

7.8 Indemnity. Each Owner shall indemnify and hold harmless the Association, the Environmental Committee and Declarant against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use by such Owner, his Invitees, or any Person under said Owner, of any Lake Lot, and shall use such Lake Lot at his sole risk without any obligation or responsibility whatsoever of the Association, the Environmental Committee or Declarant for the condition or control of the Lake Lot or any use thereof or Improvements therein or appurtenant thereto.

7.9 Rules And Regulations; Amendment. The Association may make and amend rules and regulations which interpret and/or implement the restrictions of this Article VII, provided that such rules and regulations do not conflict with the provisions of this Article VII. The

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restrictions, covenants, conditions and provisions of this Article VII may not be amended, enlarged, modified or waived in any way except by a written instrument executed by Members who hold not less than 66.6% of the voting power of the Association, and by Owners of at least 50% of the Lots adjacent to any Lake Lot which is affected by such amendment, enlargement, modification or waiver.

#### ARTICLE VIII. EASEMENTS.

8.1 Easements in Lots for Repair, Maintenance and Emergencies. The Association, the Environmental Committee and Declarant shall have easements for access through each Lot for making emergency repairs thereon necessary to prevent damage to Association Property or to another Lot or to enforce this Declaration. Nothing herein shall be deemed to obligate the Association, the Environmental Committee or Declarant to make any such emergency repairs.

8.2 Negligence or Willful Misconduct. Any damage to any Lot caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Lot shall be repaired by and at the expense of the Association.

#### ARTICLE IX. KALIHIWAI RIDGE ENVIRONMENTAL COMMITTEE.

9.1 Creation. The Kalihiwai Ridge Environmental Committee is hereby created with all of the rights, powers, privileges and duties herein set forth. The Committee shall consist of three members and an alternate member. The alternate member shall act only in the absence of a member of the Committee as provided in Section 9.6 hereof.

9.2 Initial Members. The following persons are hereby designated as the initial members and alternate member of the Kalihiwai Ridge Environmental Committee: (1) B. G. Moynahan; (2) M. O. Kirkeby; (3) G. C. Wentworth; and (4) Alternate Member: Eben Dale. Each member and alternate member shall hold office until his successor has been duly appointed as herein set forth unless he has sooner resigned or been removed.

9.3 Appointment. Declarant shall have the sole right to appoint and remove the members and alternate member of the Committee until Declarant shall assign in writing, said right to appoint and remove to the Board of Directors. The Declarant may at any time assign said right to appoint and remove to the Board, and the Board shall accept such assignment as of the date of such assignment, and shall thereafter have the sole right and responsibility to appoint and remove the members and alternate member of the Committee.

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9.4 Removal; Resignation. Any Committee member appointed by Declarant may be removed by Declarant with or without cause. Any Committee member appointed by the Board may be removed by the Board with or without cause. Any Committee member may resign by submitting a written notice to whichever of the Declarant or the Board which then has the right to appoint and remove members of the Committee, stating the effective date of his resignation, and acceptance of the resignation shall not be necessary to make the resignation effective.

9.5 Committee Functions. The functions of the Committee, in addition to any functions set forth elsewhere in this Declaration, shall be to consider and approve or disapprove any plans, specifications or other material submitted to it for the erection, construction, installation, alteration, placement or maintenance of any buildings or other Improvements on Lots, or for the alteration or remodeling of, or construction of additions to, any then existing structures on Lots; to adopt Committee rules as provided in this Article IX, including the Kalihiwai Ridge Environmental Design Rules hereinafter defined; and to perform such other duties as may, from time to time, be delegated to it by the Association. The Committee may also, at its option, take any actions necessary to enforce the provisions of this Declaration, on behalf of, and at the expense of the Association. The Committee shall meet from time to time as necessary to adequately perform its duties hereunder, and the Committee's action on matters shall be by majority vote of the Committee. Any action required to be taken by the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Committee members. The Committee shall keep and maintain a record of all actions taken by it.

9.6 Alternate Member. In the event that at any time, through illness, absence from the State, resignation or for any other reason, one or more members of the Committee is temporarily unable to perform his or her duties as a Committee member, the alternate member may act in place of such member so long as such member is unable to perform his or her duties.

9.7 Review of Plans. The Committee may, by the enactment of appropriate rules, specify the procedures for the submission and approval of said plans, specifications and other material; provided, however, that the Committee's approval or disapproval of any such plans, specifications and other materials shall be given in writing within sixty (60) days after submission of said plans, specifications and other materials and after the Owner's compliance with the requirements set forth in Section 9.10 below. If the Committee shall disapprove of any such plans, specifications, and other materials, it shall, within said sixty (60) day period, send notice of its disapproval to the Person or Persons applying for said approval at the address set forth in the application therefor and shall also return to such Person the cash

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bond, the owner's completion bond, or the note and mortgage submitted by such Person pursuant to Section 9.10 below. If notice of disapproval is not so sent within said sixty (60) day period, the Person or Persons applying for said approval shall notify the Environmental Committee in writing of its failure to timely approve or disapprove, and if the Environmental Committee thereafter fails to send notice of disapproval within fifteen (15) days after receipt of such written notice, the plans, specifications and other materials submitted shall be deemed to have been approved by the Committee.

9.8 Requirements for Plans. All plans and specifications for any new building or other Improvement shall be prepared by an Architect, shall be submitted to the Committee for its approval, and shall include, without limitation, floor, elevation, plot and grading plans; specifications for the principal exterior materials; description of color schemas; landscaping plans; provisions to be made for automobile parking; outside lighting plans, if any; and a detailed description of the location, character and method of utilization of all utilities. The plans and specifications for any alteration, modification or addition to the exterior of any existing building or Improvement including, without limitation, alterations such as exterior painting except for repainting with the same color paint and changes in or addition of fencing, must contain the same information as is required for any new building or other Improvement, except that plans for nonstructural alterations, modifications or additions need not be prepared by an Architect. After approval of any plans, specifications and other materials, the Committee shall, upon written request from the Owner, provide said Owner with a statement of approval in a form appropriate for Recordation. Approval by the Committee shall not warrant or imply the legality, safety, utility, durability or economy of any grading, construction or Improvement undertaken pursuant to said approval, and each Owner shall be responsible for his own compliance with all restrictive covenants, present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of his Lot or any existing or proposed development or condition thereof, including but not limited to zoning, subdivision, land use, environmental, ecological, building code, or other such regulations or restrictions. Each Owner shall also be solely responsible for obtaining any necessary general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps, or any other governmental permits, approvals or acts, and for the satisfaction or payment of any dedication, fees, charges, costs or assessments that may be imposed in connection with any such governmental regulation, restriction or requirement.

9.9 Standards of Review. The Committee shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed

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building, landscaping, grading, or other Improvement or use for the area in which it will be located; their compliance with the Declaration and any applicable Environmental Design Rule; the quality of the materials to be used in construction; and the effect of the proposed building, landscaping, grading, or other Improvement or use on Kalihiwai Ridge, including without limitation the effect thereof on view planes of other Lot Owners. The Committee shall require that the overall visual character of Kalihiwai Ridge be one of natural materials, natural textures, natural colors and forms compatible with those occurring in the natural landscape and that the roofs and other exterior portions of all buildings and other Improvements in Kalihiwai Ridge conform to aesthetic standards contained in and/or be constructed with materials specified in the Environmental Design Rules. The Committee may grant variances from time to time from the strict requirements of the Environmental Design Rules, provided that the variance does not violate any of the standards set forth above, and provided also that the proposed building, landscaping, grading, or other Improvement would be suitable for the location in which it is to be located. The approval or disapproval of any plans or specifications or other materials by the Environmental Committee in any one case shall not be deemed a waiver by the Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied therein when the same features or elements are embodied in plans submitted in any other cases.

9.10 Bond Requirement. The Lot Owner shall provide to the Committee, together with the plans, specifications and other materials, and as a condition precedent to any Committee approval, a cash bond in the sum of \$10,000.00, guaranteeing completion (once construction has been commenced) of all the Improvements, landscaping and other work (other than interior portions of enclosed structures which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Committee. Said \$10,000.00 may be retained and used by the Association upon receipt by the Association of written certification from the Committee that the Improvements, landscaping and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Committee, which certification specifies the various deficiencies; provided, however, that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the Association shall promptly refund said \$10,000.00 to the Lot Owner upon receipt of written certification from the Committee that the Improvements, landscaping and other work (other than interior portions of enclosed structures which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Committee. Notwithstanding the foregoing provisions of this Section 9.10, if, at

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the time of submission to the Committee by any Lot Owner, of plans, specifications and other materials, there is then outstanding a \$10,000.00 cash bond (or alternative therefor as hereinafter provided), guaranteeing the completion of other Improvements to such Owner's Lot pursuant to plans, specifications and other materials previously approved by the Committee, as provided for in this Section 9.10, then an additional cash bond need not be provided by such Owner as a condition precedent to Committee approval of the additional plans, specifications and other materials; provided however, that the existing \$10,000.00 cash bond (or alternative therefor) be extended to guarantee completion of all additional Improvements, landscaping and other work in accordance with the additional plans, specifications and other materials submitted by such Owner, or in the case where such Owner has executed a promissory note in favor of the Association as provided in subparagraph (b) below, such note be amended to provide that the Association may call such note upon receipt by it of written certification from the Committee that the additional Improvements, landscaping and other work have not been timely completed in accordance with the additional plans, specifications and other materials submitted by such Owner; and provided further that the existing bond or promissory note and mortgage be amended, in all respects, in manner satisfactory to the Committee, in its sole discretion, to provide for the retention and use of the said \$10,000.00 by the Association, upon receipt of written certification from the Committee that the additional Improvements, landscaping and other work have not been timely completed in accordance with the additional plans, specifications and other materials, and for the refund of the said \$10,000.00 or cancellation of the said promissory note only upon receipt of written certification from the Committee that the additional Improvements, landscaping and other work have been timely completed in accordance with the additional plans, specifications and other materials submitted by such Owner.

As an alternative to the \$10,000.00 cash bond required above, however, the Lot Owner may provide to the Committee either of the following:

(a) An owner's completion bond in form and by a corporate surety satisfactory to the Committee, in its sole discretion, in the penal sum of \$10,000.00 and running in favor of the Association, as obligee, guaranteeing completion (once construction has been commenced) of all of the Improvements, landscaping and other work (other than interior portions of enclosed structures which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Committee. Such bond shall be unconditional, be effective for a period of at least two and one-half (2 1/2) years from the date of the Committee's approval, and be automatically payable to the Association upon written certification by the Committee that the Improvements, landscaping and other

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work have not been timely completed in accordance with the plans, specifications and other materials approved by the Committee, which certification specifies the various deficiencies; provided, however, that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the Association shall promptly surrender said bond to the Lot Owner upon receipt of written certification from the Committee that the Improvements, landscaping and other work (other than interior portions of enclosed structures which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Committee; or

(b) A promissory note in favor of the Association, in the amount of \$10,000.00, secured by a second mortgage (which mortgage shall be junior only to the construction and permanent financing loans, if any, obtained by the Lot Owner and shall be in form satisfactory to the Committee, in its sole discretion) covering the Owner's Lot. Such note shall be in form satisfactory to the Committee, in its sole discretion, and shall be payable upon demand; provided, however, that such note shall provide that the Association may call the note only upon receipt by it of a written certification from the Committee that the Improvements, landscaping and other work have not been timely completed in accordance with all plans, specifications and other materials approved by the Committee, which certification specifies the various deficiencies, and that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the note may provide that the Association shall cancel said note if the Lot Owner shall provide to the Association a written certification from the Committee that the Improvements, landscaping and other work (other than interior portions of enclosed structures which are not visible from outside the Lot) have been timely completed in accordance with all plans, specifications and other materials approved by the Committee. Interest shall accrue on the principal amount of such promissory note commencing upon demand, at the lower of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

9.11 Prosecution of Work After Approval. After approval by the Committee of any plans, specifications or other materials, and after complying with the requirements set forth in Section 9.10 above, the construction, alteration or other work described in such plans, specifications or other materials shall be performed as promptly and diligently as possible and in complete conformity with said plans, specifications or other materials. Failure to commence such construction, alteration or other work within twelve (12) months after the date of approval, or



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within such other time as the Committee shall specify, or the failure to complete the proposed work strictly in accordance with said plans, specifications or other materials within twelve (12) months after commencement of the work or within such other time period (longer or shorter) as the Committee shall specify, shall operate automatically to revoke the approval by the Committee and, (a) upon written certification by the Committee that the construction, alteration, landscaping or other work (other than interior portions of enclosed structures which are not visible from outside the Lot) have not been timely completed (if commenced) in accordance with said plans, specifications or other materials, the Association may retain the cash or enforce the bond, note and/or mortgage provided by the Lot Owner pursuant to Section 9.10 above, and may (but need not) undertake to complete the Improvements, landscaping or other work on behalf of the Lot Owner or to restore the Lot to the conditions as nearly as possible to its state prior to any such construction, alteration or other work; and (b) upon demand by the Committee, the Lot upon which such construction, alteration or other work was undertaken shall be restored by the Lot Owner as nearly as possible to its state existing prior to any such construction, alteration or other work; provided that if said Lot is not so restored the Committee or the Association may undertake such restoration and charge the cost thereof to the Owner of said Lot, which cost shall be enforceable as an Assessment in accordance with Article V hereof. The rights and remedies provided for in the preceding sentence are cumulative with all other rights and remedies available to the Association and the Committee under this Declaration and at law or in equity. The Committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any such construction, alteration or other work. The Committee may record a Notice of Nonconformance to show that any such work has not been approved, that any approval given has been revoked, that such work has not been completed in accordance with approved plans, specifications and other materials, that such Improvements have not been completed within the appropriate time period, or that such Improvements have not been maintained in accordance with this Declaration and the Environmental Design Rules and each Owner is hereby deemed to consent to and authorize the Committee to record such a Notice of Nonconformance against such Owner's Lot.

9.12 Fees. The Committee shall have the right to require payment of a reasonable fee of not less than \$500.00 for review of proposed plans, specifications and other materials, the unused portion of which, if any, shall be refunded to the Person seeking Environmental Committee approval upon the giving of such approval.

9.13 Rule-Making Authority. The Committee shall adopt rules and regulations (1) regulating construction at Kalihiwai Ridge, including, without limitation, dust and

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noise abatement requirements, use of temporary construction camps, trailers, construction offices, supply and equipment shelters and screening, hours of construction activity and construction equipment routes, and (ii) interpreting or implementing the provisions of this Declaration pertaining to the design of buildings and other Improvements, including, without limitation, setback requirements; building height; minimum square footage requirements for Improvements; types of building materials; permissible exterior colors; landscaping; and aesthetic requirements and (iii) establishing procedures for the approval of plans and specifications and other materials required to be submitted to the Committee pursuant to this Declaration or said Environmental Design Rules. Said rules and regulations shall be called the "Kalihiwai Ridge Environmental Design Rules and Guidelines." A copy of the Kalihiwai Ridge Environmental Design Rules, as from time to time adopted, amended or repealed, certified by a member of the Committee, may, at the option of the Committee, be Recorded, and shall be maintained in the Association office and shall be available for inspection during normal business hours by any Owner or prospective Owner or any Architect or agent of any Owner or prospective Owner.

9.14 Liability of Committee Members. Provided that such Persons, upon the basis of such information as may actually be possessed by them, act in good faith and without willful or intentional misconduct, neither the Declarant nor Committee nor any member, employee, officer or director thereof shall be liable to the Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed on account of:

9.14.1 the approval or disapproval of any plans, specifications and other materials, whether or not defective; or

9.14.2 the requiring of modifications to any places as a condition to the Environmental Committee's approval thereof; or

9.14.3 the construction or performance of any work, whether or not pursuant to approved plans, specifications and other materials; or

9.14.4 the development or manner of development of any land within Kalihiwai Ridge; or

9.14.5 the execution of a form of approval pursuant to Section 9.8, or the execution and recordation of a Notice of Nonconformance pursuant to Section 9.11, whether or not the facts stated therein are correct; or

9.14.6 the prohibition of or the failure to prohibit the use of chemicals as provided in Section 6.28 above.

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9.14.7 Legal Transactions. the improper use by an Owner or Owner's agent of or the failure to control the use of agricultural chemicals as provided in Section 6.20 above; or

9.14.8 the performance of any other function pursuant to the provisions of this Declaration.

9.15 Professional Advice. The Committee may employ the services of an Architect, landscape architect, land planner, attorney or any other consultant to render professional advice, and may pay a reasonable compensation for such services, which compensation may be charged, in addition to the fee as provided in Section 9.12 herein, to any Person who has submitted plans, specifications or other materials requiring review by such Architect, landscape architect, land planner, attorney or consultant; provided that such compensation may only be charged to such Person if he has been informed in advance that such compensation will be charged to him.

9.16 Minimum Fines. Without limiting any other remedies available to the Association, the Committee or Declarant, if an Owner commences construction of any new Improvements, or commences material alterations on any existing Improvements, without first obtaining the approval of the Environmental Committee, such Owner shall be subject to a minimum fine of not less than \$2,500.00. Such minimum fine may be imposed and collected by the Association, in accordance with the provisions of Section 4.7 hereof, or in the event that the Association shall fail to so impose such minimum fine, by Declarant, in accordance with the provisions of Section 13.2 hereof.

9.17 Enforcement Costs; Lien Rights. If any court proceedings are instituted in connection with the right of enforcement and/or remedies provided in the Environmental Design Rules or this Declaration, the Committee shall be entitled, in the event it shall prevail in such proceeding, to recover its costs and expenses in connection therewith, including reasonable attorneys' fees. The Committee shall have a lien against an Owner's Lot for any unpaid fees, compensation or other charges for which such Owner is obligated under this Declaration to pay to the Committee. Such lien shall be enforceable in the manner described in Section 6.30 above. The rights and remedies provided for in this Section 9.17 are cumulative with all other rights and remedies available to the Committee under this Declaration and at law and in equity.

#### ARTICLE X. INSURANCE.

10.1 Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain fire, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business

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in the State of Hawaii. All such insurance shall name as insureds Declarant, the Association, the Board and its members, the Kalihiwai Ridge Environmental Committee and its members and the officers, directors, employees and agents of Declarant and the Association. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent reasonably practicable, such insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against Declarant, the Association, the Board and its members, the Kalihiwai Ridge Environmental Committee and its members and the officers, directors, employees, and agents of Declarant and the Association and against each Owner and each Owner's employees and Invitees; (ii) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of Declarant, the Association, the Environmental Committee or the officers, members, employees or agents of Declarant, the Association, the Board, or the Environmental Committee, or of any Owner or such Owner's employees or Invitees; (iii) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee; (iv) contain a standard mortgage clause endorsement in favor of the mortgagee of any part of Association Property except a mortgagee who is covered by other and separate insurance; and (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee covered by any standard mortgage clause endorsement. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Board deems consistent with good business practice.

The cost and expense of all insurance obtained by the Association, except insurance obtained at the request of and specifically benefitting any particular Owner or group of Owners, shall be an expense of the Association.

10.2 Fire Insurance. The Association shall obtain and maintain fire insurance insuring all Association Property against loss or damage caused by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and if available and if deemed appropriate by the Association, all risk, for the full insurable replacement cost of said Association Property.

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10.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury and property damage liability of the Association, its officers, directors, employees and agents and of each Owner and each Owner's employees and Invitees, arising in connection with ownership, operation and maintenance, occupancy or use of Association Property with limits of not less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability.

10.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

10.5 Insurance by Owners. Each Owner shall be responsible for obtaining insurance he deems desirable, including, without limitation, fire insurance covering Improvements, furnishings and personal property belonging to that Owner and that Owner's employees and Invitees. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent reasonably practicable, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees, against Declarant, its officers, directors, employees and agents, against the Kalihwai Ridge Environmental Committee and its members, and against other Owners and their employees and Invitees. A copy of any insurance policy obtained by an Owner shall be furnished to the Association upon request of the Association.

10.6 Receipt and Application of Insurance Proceeds. Except as some particular Person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association.

10.7 Other Insurance by Association. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including fire insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

10.8 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Lot, or of any Owner-installed Improvements upon any Lot, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be payable by the Owner of such Lot.

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ARTICLE XI. DESTRUCTION, CONDEMNATION AND RESTORATION OF KAHIHUAI RIDGE.

11.1 Certain Definitions. The following terms shall have the following definitions:

11.1.1 Substantial and Partial Destruction. "Substantial Destruction" shall exist whenever damage or destruction to all of the Common Area is valued at ten percent (10%) or more of the total assessed value of all of the Common Area. "Partial Destruction" shall mean any other damage or destruction.

11.1.2 Substantial and Partial Condemnation. "Substantial Condemnation" shall exist whenever a taking of all of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation is valued at ten percent (10%) or more of the total assessed value of all of the Common Area. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu of eminent domain.

11.1.3 Restoration. "Restoration", in the case of any damage or destruction, shall mean restoration of the Common Area to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction and in the case of condemnation, shall mean restoration of the remaining portion of the Common Area to a state appropriate for an agricultural community.

11.1.4 Available Funds. "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association including funds carried over from the previous fiscal year. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee.

11.2 Determination by the Board. Upon the occurrence of any damage or destruction to the Common Area or any part thereof, or upon a complete or partial taking of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation, the Board shall make a determination as to whether such damage or taking was substantial or partial.

11.3 Restoration of the Common Area. Restoration of the Common Area shall be undertaken by the Association without a vote of Owners in the event of Partial Destruction or Partial Condemnation. Within sixty (60) days after the Board has determined that Substantial Destruction or Substantial Condemnation has occurred, the Board shall send each Owner a written description of the Destruction or Condemnation and a ballot on which each Owner shall indicate whether or not Restoration is to be

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undertaken. Restoration shall be undertaken unless Owners holding two-thirds (2/3) of the voting power of the Association vote against such Restoration. In the event the insurance proceeds actually received exceed the cost of Restoration when such Restoration is undertaken pursuant to this Section 11.3, the excess shall be either used as determined by the Association, used to reduce Assessments or paid and distributed to all of the Owners in proportion to the number of Points attributable to the Lots owned by such Owners.

11.4 Action if Restoration of the Common Area is Disapproved. If Restoration is not undertaken in the event of Substantial Destruction or Substantial Condemnation, the Association shall remove all damaged or destroyed Improvements from the Common Area and restore the Common Area to a safe condition.

11.5 Authority of Association to Restore. The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore the Common Area whenever Restoration is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration.

11.6 Payment of Proceeds. All insurance proceeds shall be paid to the Association.

11.7 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy a Supplementary Assessment payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds.

11.8 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards for a complete taking of the Common Area or a taking of part of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation shall be payable to the Association. The award shall be applied to costs and expenses of Restoration if undertaken and, to the extent not so applied, shall be used as determined by the Association.

## ARTICLE XII. EXPANSION OF KALTHIWAI RIDGE.

12.1 Reservation of Right to Expand. Declarant reserves the right to expand by annexing not more than 3,000 acres of additional land located on the Island of Kauai in the vicinity of the Real Property, as shown in Exhibit B attached hereto and made a part hereof, plus buildings and Improvements located thereon. Such expansion shall not require the consent of any Owners nor shall any such expansion require the payment of any expansion or annexation fee.

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12.2 Limitation on Declarant's Right to Expand. Declarant's right to annex such land shall expire with respect to any land not annexed on or before the twentieth (20th) anniversary date hereof.

12.3 Annexing Declarations. Such expansion may be accomplished by filing for Record by Declarant an Annexing Declaration containing a legal description of the land and setting forth such additional or different limitations, covenants, conditions and restrictions, if any, as are applicable to such additional land. Such Annexing Declaration shall provide that the land so annexed shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and shall, in addition, state the maximum number of Single Family Residences which may be constructed on each Lot so annexed.

12.4 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration automatically shall be expanded to encompass and refer to Kalihiwai Ridge as so expanded. Thus, for example, "Real Property" shall mean the land described in Exhibit "A" hereto plus any additional land added by an Annexing Declaration or by Annexing Declarations, and reference to this Declaration shall mean this Declaration as so modified.

12.5 Declaration Operative on New Land and Improvements. Any such additional land, buildings and Improvements shall be subject to all the terms and conditions of this Declaration and of such Annexing Declaration or Declarations upon Recordation of the Annexing Declaration; provided that in the event that any provision of any such Annexing Declaration is inconsistent with any provision of this Declaration, the terms and conditions of this Declaration shall prevail.

12.6 Alternative Method of Expansion. The Association may expand by annexing land, buildings and Improvements on the Island of Kauai upon approval by an affirmative vote of Members holding two-thirds (2/3) of the voting power of the Association. Voting by proxy shall be permitted. Notice of said meeting shall be in writing and shall state the date, time and place of the meeting and the matter to be voted on at the meeting. Such notice shall be given to all Owners not less than thirty (30) days nor more than fifty (50) days before the date of the meeting.

12.7 Scope of Declaration. No land except that described in Exhibit "A" and that annexed hereto as provided in this Article XII shall be deemed subject to this Declaration, whether or not any such land is shown on any subdivision map filed by Declarant or is described or referred to in any document executed and/or Recorded by Declarant. No designation, on any map Recorded or filed by Declarant, of any parcel, lot or other area as a private area, common area, road, street, school or park or as any other type of parcel, lot or area, shall be deemed to



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be a dedication or commitment or representation that such parcel, lot or area is or will be used or restricted to such use, except with respect to parcels, lots or areas described in said Exhibit "A" or annexed to Kalihiwai Ridge as herein provided and so designated by Declarant in a Recorded document. No Owner shall acquire nor shall the public nor any public body or agency nor any other Person acquire any interest or rights in any land by reason of such designation or Recording or filing except as aforesaid. Nothing herein or in any amendment hereto or on any maps shall be deemed to be a representation, warranty or commitment that Declarant will commit to Kalihiwai Ridge or subject to this Declaration any land it may now own or may hereafter acquire other than that described in said Exhibit "A".

#### ARTICLE XIII. ENFORCEMENT.

13.1 Enforcement and Remedies. In addition to any other remedies herein provided, each provision to this Declaration with respect to an Owner or the Lot of an Owner shall be enforceable by the Association, by the Environmental Committee on behalf of the Association, by Declarant, or by any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith, including reasonable attorneys' fees.

13.2 Declarant's Right to Impose Fines. If an Owner commences construction of any new Improvements on any Lot or commences material alterations on any existing Improvements on any Lot without first obtaining the approval of the Environmental Committee, and if the Association shall fail to impose and correct the minimum fine described in Section 9.16 hereof within forty-five (45) days after Declarant notifies the Association to initiate steps to impose and collect said minimum fine, then Declarant shall have the right to impose and collect such minimum fine, and if such minimum fine is imposed, Declarant shall have a lien against such Owner's Lot to secure the payment of such minimum fine, plus all costs and expenses of collecting said minimum fine, including reasonable attorneys' fees. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. Such minimum fine collected by Declarant shall accrue to the benefit of Declarant, it being intended to compensate Declarant for the harm which would be suffered by Declarant, during the forty-five day period given the Association to act, to its reputation as the developer of Kalihiwai Ridge as a result of any such unapproved construction or alteration. The imposition of such minimum fine by Declarant shall be in addition to any other remedies provided herein or available at law or in equity for the enforcement of this Declaration, and the

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imposition and collection of such fine by Declarant shall not preclude the Association, the Declarant, the Environmental Committee or any Owner from pursuing any other available remedy, including, without limitation, proceedings for prohibitive or mandatory injunction or suit or action to recover damages.

The provisions of this Section 13.2 are subject to the requirement that said minimum fine may not be imposed until the accused Owner has been afforded the right to have a hearing before a committee designated by Declarant to conduct such hearing, or has in writing or otherwise as herein provided, waived such right. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing; provided, however, that the failure of any Owner to appear at a hearing, the notice of which has been delivered to such Owner no less than thirty (30) days prior to such hearing, shall constitute a waiver of such Owner's right to be heard prior to imposition of the minimum fine.

The payment of the minimum fine assessed by Declarant shall be a joint and several obligation of the Owner against whom the minimum fine is assessed, and each such Owner's heirs, personal representatives, successors and assigns. Such minimum fine may be recovered by a suit or money judgment by the Declarant without foreclosing or waiving any lien securing the same.

#### ARTICLE XIV. MISCELLANEOUS.

14.1 Duration of Declaration. This Declaration, and each of the provisions contained in this Declaration, shall run with the land and continue and remain in full force and effect for a period of twenty (20) years, beginning as of the date of Recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing signed by not less than seventy-five percent (75%) of the then Owners of Lots within Kalihiwai Ridge (based on One Vote per Lot), has been recorded at least one (1) year prior to the end of any such preceding period, agreeing to change or terminate this Declaration or said covenants, conditions and restrictions in whole or in part.

14.2 Amendment. Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto (i) by the Recording of a written instrument or instruments specifying the amendment or change, executed by Members who hold not less than sixty-six and 5/10 percent (66.6%) of the voting power of the Association, except that (a) Articles XII and XIII can only be amended by a written instrument executed by Members who hold not less than one hundred percent (100%) of the voting power of the Association, and approved by Declarant or its assigns, (b) Sections 6.4, 6.5, 6.6, 6.7,

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9.3, 9.16 and 14.1c can only be amended by a written instrument executed by Members who hold not less than one hundred percent (100%) of the voting power of the Association, and approved in writing by Declarant or its assigns, (c) Section 3.4 can only be amended by a written instrument executed by Members who hold not less than one hundred percent (100%) of the voting power of the Association, and (d) Article VII can only be amended by a written instrument executed by Members who hold not less than sixty-six and 6/10 percent (66.6%) of the voting power of the Association and by the Owners of at least 50 percent of the Lots adjacent to each Lake Lot; or (ii) by Declarant any time prior to the sale of the first Lot in Kalihiwai Ridge.

14.3 Effect of Provisions of Declaration. Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in Kalihiwai Ridge or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in Kalihiwai Ridge or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the Association and to, with and for the benefit of each and every other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to Kalihiwai Ridge and each Lot and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of Kalihiwai Ridge and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association burdening and encumbering the title to Kalihiwai Ridge and each Lot in favor of the Association.

14.4 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage or other lien on any Lot taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Lot and listing the name or names of the Owner or Owners of fee simple title to the Lot and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage or other lien or title or

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interest acquired by any purchaser. Upon foreclosure of any such mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien, no such holder who thereby assumes title to a Lot shall be required to correct past violations hereof with respect to said Lot so long as said Lot is neither occupied nor used for any purpose by such holder but is merely held for prompt resale. The Association, at its sole cost and expense, may correct said past violations. Any such purchaser on foreclosure shall, however, take subject to the Declaration except only that violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser, including violations of Article V hereof, shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

14.5 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts of Kalihiwai Ridge as set forth in this Declaration, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over Kalihiwai Ridge.

14.6 Assignment of Powers to the Association. Any and all of the rights and powers vested in Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Association and the Association shall accept the same effective upon the Recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

14.7 Non-Avoidance. No Owner through non-use of the Common Area or by abandonment of his Lot may avoid the burdens or obligations imposed on him by this Declaration.

14.8 Limited Liability. Neither Declarant, the Association, the Board, the Kalihiwai Ridge Environmental Committee nor any officer, director, member, agent or employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was, on the basis of such information actually possessed by the Person against whom the claim is made, in good faith and without willful or intentional misconduct.

14.9 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association, the Declarant, and each Owner and the heirs, personal representatives, successors and assigns of each.

14.10 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or

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in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

14.11 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

14.12 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

14.13 Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

14.14 Notices. Any notice, information or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material.

Any notice, information or material delivered or furnished to the name and address of an Owner as last shown on the books of the Association shall be deemed to be the proper delivery or furnishing of such notice, information or material. If notice of a meeting is given as provided for above, nonreceipt of actual notice by any Owner shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any Owner may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to him. The presence of any Owner at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

Notices, information and material required to be given hereunder to Declarant, the Association, the Board or the Kalihiwai Ridge Environmental Committee shall be addressed to such entity in care of the Association at the office of the Association.

14.15 Word Usage. The use of the masculine gender herein shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the text so requires.

These documents are for owner-viewing only. No representation is made or implied that they are up-to-date or meet standards for legal transactions.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date and year first above written.

C. BREWER PROPERTIES, INC.

By B.G. Monahan  
Its Senior Vice President

By [Signature]  
Its Vice-President

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

On this 3<sup>rd</sup> day of October, 1988,  
before me appeared B. G. MOYNAHAN  
and G. C. WENTWORTH, to me personally  
known, who being by me duly sworn, did say that they are  
the Senior Vice President and Vice-President  
respectively of C. BREWER PROPERTIES, INC., and that the  
seal affixed to the foregoing instrument is the corporate  
seal of said corporation and that said instrument was  
signed and sealed in behalf of said corporation by  
authority of its Board of Directors, and said  
B. G. MOYNAHAN and G. C. WENTWORTH  
acknowledged said instrument to be the free act and deed  
of said corporation.

Harold J. Francisco  
Notary Public  
State of Hawaii

My Commission expires: 8/18/92

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~~EXHIBIT A~~

All those certain parcels of land situate at Kalihiwai and Kilauea, District of Hanalei, Island and County of Kauai, State of Hawaii, more particularly described as Lots 1 to 25, inclusive, of the Kalihiwai Ridge Subdivision as shown on File Plan 1934 filed in the Bureau of Conveyances of the State of Hawaii.

EXHIBIT A



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EXHIBIT B

MAXIMUM SINGLE FAMILY RESIDENCES  
ALLOWED ON EACH LOT

Lot Number, as shown on File Plan 1934	Maximum Number of Single Family Residences
1	1
2	1
3	1
4	1
5	1
6	2
7	2
8	2
9	2
10	2
11	3
12	2
13	3
14	2
15	2
16	1
17	5
18	3
19	5
20	5
21	5
22	3
23	5
24	5
25	5

EXHIBIT B

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EXHIBIT B

MAXIMUM SINGLE FAMILY RESIDENCES  
ALLOWED ON EACH LOT

Lot Number, as shown on File Plan 1934	Maximum Number of Single Family Residences
1	1
2	1
3	1
4	1
5	2
6	2
7	2
8	2
9	2
10	3
11	2
12	3
13	2
14	2
15	1
16	5
17	3
18	5
19	5
20	5
21	4
22	5
23	5
24	5
25	5

EXHIBIT B

EXHIBIT B