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KĀNĀWAI

(DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS)

FOR KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION

KĀNĀWAI
(DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS)
FOR KUMUHAU STREET AND KAKA‘INA STREET

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KĀNĀWAI

(DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS)

FOR KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION

THIS KĀNĀWAI (DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS) (the "KĀNĀWAI") FOR KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION is made this 15th day of December, 2010, by the DEPARTMENT OF HAWAIIAN HOME LANDS, by its Hawaiian Homes Commission, STATE OF HAWAI'I ("DHHL"):

RECITALS

A. DHHL is the fee owner of the land located in Waimānalo, O'ahu, State of Hawai'i, as more particularly described in Exhibit "A" attached hereto as a part hereof, upon which is situated the residential community, known as KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION, comprised of single-family residences located on leasehold lots (the "Community"), said land together with such additional lands as shall be subjected to this Kānāwai being referred to as the "Property";

B. DHHL, as the Declarant, wishes to establish and assure a uniform plan for the development of the Community, and to enhance and protect the economic and aesthetic value and desirability of the Community and the health, safety and welfare of the residents within the Community; and

C. This Kānāwai governs appropriate use and maintenance of, additions to and improvements upon, the lots within the Community. The term "Kānāwai" refers to the traditional Hawaiian land tenure code that ensured appropriate use of land and quality of life within a given community or ahupua'a. In many ways, this Kānāwai similarly governs the Community as a declaration of covenants, conditions and restrictions would govern a master-planned community:

DHHL, as the Declarant, declares that the Property is hereby subjected to, and shall be held, leased, sold, occupied, used and transferred subject to, this Kānāwai.

DHHL further declares that this Kānāwai and all amendments and supplements thereto shall run with the land of the Property, and shall be binding upon DHHL, Declarant, the Association, each Tenant and all parties claiming under such Tenant or under this Kānāwai, and shall inure to the benefit of, and be enforceable by, DHHL, the Declarant, the Association, each Tenant, and all succeeding Tenants.

Additional land owned by DHHL, including the land described in Exhibit "B" attached hereto as a part hereof, may be subjected or annexed to this Kānāwai. DHHL shall not be obligated, however, to develop or annex such additional land. Any such annexation will be governed by the provisions for annexation of land contained herein. Development of the Property shall be subject to, in all events, applicable laws and regulations.

The KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION Community Association, referred to herein, has been or will be established as a community association incorporated as a non-profit corporation under the laws of the State of Hawai'i for the Members and Tenants of the Property.

Article I: Definitions

The words used above or hereafter in this Kānāwai which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in this Article I of this Kānāwai.

1.01 **"Act"** shall mean the Hawaiian Homes Commission Act of 1920, as amended, and the rules and regulations promulgated thereunder, including Hawai'i Administrative Rules, Title 10, as the same may be amended.

1.02 **"Annual Assessments"** shall mean and refer to the Annual General Assessment and any Services Assessment which may be levied by the Association in each of its fiscal years pursuant to Article IV of this Kānāwai.

1.03 **"Annual General Assessment"** shall mean and refer to the annual charge shared by all Class "A" Members established pursuant to Article IV of this Kānāwai.

1.04 **"Assessable Property"** shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

1.05 **"Assessments"** shall mean and refer to the Annual General Assessments and any Services Assessments, Special Assessments and Initial Assessments which may be levied by the Association pursuant to Article IV of this Kānāwai.

1.06 **"Association"** shall mean and refer to KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION Community Association, a Hawai'i non-profit corporation, its successors and assigns.

1.07 **"Board of Directors" or "Board"** shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

1.08 **"Class A Members"** shall mean and refer to all Tenants other than the Class B Member.

1.09 **"Class B Member"** shall mean and refer to the Declarant.

1.10 **"Close of Escrow"** shall mean the date that each Lease demising a Lot to a Tenant is recorded in the Official Records.

1.11 **"Common Area"** shall mean and refer to all real property and real property interests (including leases, licenses and easements) and the improvements thereon from time to time designated as Common Area by DHHL or Declarant or otherwise owned, leased or licensed

by the Association for the common use and enjoyment of the Members. The Association is responsible for management and maintenance of all Common Area, which shall consist of a private park, all additional real property and real property interests identified as Common Area in any Supplementary Kānāwai and all additional real property and real property interests accepted by the Association as Common Area.

1.12 **“Declarant”** shall mean and refer to

(a) DHHL; or

(b) Any person or entity, its successors and assigns, to which DHHL has assigned any or all of the rights and obligations of the Declarant set forth in the Governing Documents by an assignment expressed in an instrument, including, without limitation, a deed, lease, license or assignment, as the case may be, transferring such interest if such assignee agrees in writing with DHHL to accept such assignment. No successor or assignee of DHHL shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment designating such party as Declarant hereunder or which pass by operation of law.

1.13 **“Design Guidelines”** shall mean the architectural and design guidelines, rules, regulations, limitations and restrictions adopted pursuant to Article V of this Kānāwai for the construction, reconstruction, modification, alteration and maintenance of Structures on the Property.

1.14 **“Development Period”** shall mean and refer to the period commencing on the date of this Kānāwai first set forth above and terminating on the earlier of: (a) December 31, 2014; or (b) any earlier date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date; provided that in the event that Declarant annexes additional land to this Kānāwai, the Development Period shall be automatically extended, or if already terminated, re-established, for a period of three (3) years commencing on the date of such annexation, unless earlier terminated by Declarant in a written notice to the Association. If Declarant is delayed in the improvement and development of the Property due to a sewer, water, or building permit moratorium, or other cause or event beyond Declarant’s reasonable control, then the aforesaid Development Period shall be extended for the length of the delay or five years, whichever is less.

1.15 **“Dwelling Unit”** shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) a patio and single-family detached or zero lot line homes, as may be used and defined as herein provided or as provided in the Design Guidelines or House Rules.

1.16 **“Exempt Property”** shall mean and refer to all Lots, and Structures thereon, owned by DHHL, but not leased to any Tenant, and Common Areas owned or held by the Association, for so long as they shall be the owner or holder thereof.

1.17 **“Federal Agencies”** shall mean collectively one or more of the following agencies to the extent that any such agency is a Mortgagee, insurer or guarantor of a Mortgage

within the Property and the following letter designation for such agencies shall mean respectively, the agency specified within the parentheses following such letter designation:

- (a) **"FHA"** shall mean the Federal Housing Administration;
- (b) **"Fannie Mae"** shall mean the Federal National Mortgage Association;
- (c) **"Freddie Mac"** shall mean the Federal Home Loan Mortgage Corporation;
- (d) **"GNMA"** shall mean the Government National Mortgage Association;
- (e) **"HUD"** shall mean the United States Department of Housing and Urban Development;
- (f) **"USDA-RD"** shall mean the United States Department of Agriculture-Rural and Community Development; and
- (g) **"VA"** shall mean the Department of Veterans Affairs.

1.18 **"Governing Documents"** shall mean this Kānāwai, any Supplementary Kānāwai, the Articles, Bylaws, Design Guidelines, House Rules and all other rules or regulations adopted by the Board of Directors or the Design Committee in accordance with the Kānāwai, and any amendments to and of the foregoing.

1.19 **"House Rules"** shall mean rules initially established and adopted by Declarant, as amended and repealed from time to time by the Board pursuant to the Governing Documents.

1.20 **"Kaka'ina Map"** shall mean File Plan 2475, Recorded at the Bureau, which is incorporated herein by this reference.

1.21 **"Kānāwai"** shall mean and refer to this Kānāwai (Declaration of Covenants, Conditions and Restrictions) for KUMUHAU SUBDIVISION AND KAKA'INA SUBDIVISION, as it may be amended from time to time or supplemented in the manner provided herein.

1.22 **"Kumuhau Map"** shall mean the file plan to be recorded at the Bureau and/or the map filed in the Land Court, which is incorporated herein by this reference.

1.23 **"Kānāwai Enforcement Procedures"** shall mean and refer to the Kānāwai Enforcement Procedures adopted by the Hawaiian Homes Commission, and the rules promulgated thereunder, as the same may be amended.

1.24 **"Land Development Activity"** shall mean and refer to any building, construction, reconstruction, or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services, or any other Structure on a Lot or any other portion of the Property by DHHL, Declarant and/or by a Participating Builder, if granted approval in writing by DHHL or Declarant.

1.25 **"Lease"** shall mean the homestead lease executed by DHHL, as lessor, and a Tenant, as lessee, demising a Lot pursuant to the Act.

1.26 **"Lot"** shall mean and refer to each lot shown upon the Subdivision Maps of the Property filed in the Official Records and which has been subjected to this Kānāwai and upon which a Dwelling Unit could be constructed in accordance with the applicable laws, ordinances, codes and regulations of the State of Hawai'i ("State") and the City and County of Honolulu ("County") in effect from time to time. "Lot" shall not mean and refer to Common Areas.

1.27 **"Member"** shall mean the Class A Members and the Class B Member of the Association.

1.28 **"Mortgage"** shall mean and refer to any mortgage encumbering any Lot or Common Area duly recorded in the Official Records. **"First Mortgage"** shall mean and refer to a Mortgage with priority over all other Mortgages.

1.29 **"Mortgagee"** shall mean the holder of any Mortgage encumbering one or more of the Lots. **"First Mortgagee"** as used herein, shall mean a holder of a Mortgage with priority over all other Mortgages.

1.30 **"Official Records"** shall mean the official records of the Bureau of Conveyances of the State of Hawai'i ("Bureau"), the Office of the Assistant Registrar of the Land Court of the State of Hawai'i ("Land Court"), and/or the recording records established and maintained by DHHL.

1.31 **"Participating Builder"** shall mean any Person regularly engaged in the building or construction business approved by Declarant to engage in Land Development Activity.

1.32 **"Person"** shall mean and refer to any individual, corporation, joint venture, partnership, association, limited liability company, trust, unincorporated organization, or government or any agency or political subdivision thereof, or any other separate legal entity.

1.33 **"Project Conditions"** shall mean any and all land use and zoning permits, entitlements, ordinances, conditions, and constraints issued or imposed by various State, federal, and County governmental and quasi-governmental entities and agencies in connection with the Property.

1.34 **"Property"** shall mean and refer to those certain lands situated in Waimānalo, O'ahu, Hawai'i, more particularly described in Exhibit "A" attached hereto, together with such additional lands as may be subjected to this Kānāwai through annexation.

1.35 **"Public Agency"** shall mean individually and/or collectively the County, the State, and the United States of America, or any agency of any of the foregoing that has authority over all or any portion of the Property or which regulates or has the authority to regulate any of the uses thereon.

1.36 **"Record"** shall mean to record or file a document or map in the Official Records, as the Declarant shall determine.

1.37 **“Services Assessment”** shall mean and refer to the charge or charges imposed upon a section, neighborhood, housing type, or subdivided parcel of the Property for certain services rendered pursuant to Article IV of this Kānāwai.

1.38 **“Special Assessment”** shall mean and refer to any special charge established pursuant to Article IV of this Kānāwai.

1.39 **“Structure”** shall mean and refer to:

(a) Any thing or object (other than trees, shrubbery, landscaping, and hedges less than two feet high), the placement of which upon any Lot may affect the appearance of such Lot, including any Dwelling Unit, building, garage, porch, shed, greenhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, signboard, or any other temporary or permanent improvement on such Lot (including, without limitation, portable basketball goals);

(b) Any excavation, fill, ditch, dam, or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, and any Lot; and

(c) Any change of more than six inches in the grade of any Lot.

1.40 **“Subdivision Maps”** shall mean, collectively, the Kaka’ina Map and Kumuhau Map, and the file plans and/or maps Recorded for any additional property annexed to this Kānāwai, or any portion thereof, all of which are incorporated herein and by this reference and made a part hereof.

1.41 **“Supplementary Kānāwai”** shall mean a writing annexing additional property extending this Kānāwai to such additional property and/or which otherwise supplements the terms of this Kānāwai.

1.42 **“Tenant”** shall mean one or more Persons who are alone or collectively the record lessee of a Lot under a homestead lease from DHHL, excluding those having any such interest merely as security for the performance of an obligation. Persons who are not record lessees are excluded from this definition. Tenants are responsible to ensure that members of their immediate family who actually reside within the Property and in the same household with such Tenant, and guests and invitees of such Tenant, observe and perform the provisions regarding use and occupancy set forth in the Governing Documents.

Article II: Property Rights of Common Areas

2.01 **Rights of Enjoyment of Common Areas.** Each Member shall have a nonexclusive right of enjoyment in and to the Common Areas which shall be appurtenant to the leasehold interest in his Lot, which right shall terminate when such person ceases to have the status of a Member. Such rights shall be subject to the provisions below.

(a) The right of the Board of Directors to adopt, promulgate, enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Common

Areas which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such rules and regulations may include limitations on the number of guests of Tenants who may use the Common Areas at any one time.

(b) The right of the Board of Directors to establish and charge reasonable admission and any other fees for certain types of extraordinary uses of the Common Areas.

(c) The right of the Board of Directors to suspend the voting rights and the right of any Tenant to use all or any portion of the Common Areas (with the exception of any streets or access ways, but including parking areas) for (i) a violation of the Governing Documents or for an infraction of the Board's rules and regulations for period(s) not to exceed 60 days or until such violation is cured and (ii) for so long as any Assessment for such Lot remains unpaid and overdue.

(d) The Association may at any time license all or a part of the Common Areas to any public agency, authority, or other entity or organization upon such terms and conditions as shall be agreed upon by such agency, authority, entity, or organization and the Board of Directors, including, without limitation, terms and conditions providing for the use of such Common Areas by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Areas and the assessments of Tenants for the costs of such maintenance and repair. No such license shall be effective, however, unless approved by 66 2/3% of the vote of the Class A Members at a meeting at which a quorum is present and approved by the Class B Member, except for the following which shall not require any Class A Members' consent:

(i) Granting licenses which do not interfere with the intended Common Area use.

(e) The right of the Board of Directors to regulate parking on Common Areas through the granting of licenses, or promulgation of rules and regulations. In areas where parking is provided on private streets and parking bays owned by the Association, the right but not the obligation, of the Board to assign and reserve parking spaces for the exclusive use of individual Tenants. All unassigned and/or visitor parking spaces shall be available on a first-come, first-served basis.

(f) The Association shall not maintain any private roads not dedicated or licensed to the County or State until a notice of substantial completion is published for such roads.

Article III: Association Membership, Voting Rights, Board of Directors

3.01 Organization of the Association. The Association has been or will be organized as a nonprofit, nonstock corporation under the laws of Hawai'i to:

(a) Provide for the acquisition, construction, management, maintenance, and care of the Common Areas;

(b) Obtain, manage and maintain services for the Property, or sections thereof including, as necessary, and deemed by the Board of Directors, refuse collection, grass mowing of Common Area or Lot yard areas (if requested by a Tenant or in the event of a failure to maintain such area in accordance with the Governing Documents), street cleaning, and parking area maintenance and management. This provision authorizes, but does not require, the Association to provide maintenance services to its Members;

(c) Take any acts or actions to enforce the Governing Documents; and

(d) Take other acts or action which would promote the health, safety or welfare of the Tenants.

The Association is charged with such further duties and invested with such powers as are prescribed by law and set forth in the Governing Documents, including the Articles of Incorporation of the Association and herein as all of the same may be amended from time to time ("Articles"). The Articles and Bylaws of the Association ("Bylaws") shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Kānāwai. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Common Areas, and other than by a rebate of any excess Annual Assessment, Special Assessment or other dues, fees, or Assessments) to the benefit of any Member or individual.

3.02 Membership in the Association. The Association shall have the following classes of membership:

(a) **Class A.** Class A Members shall be all Tenants (with the exception of Declarant as provided in Section 3.03 (b)). A Person shall automatically become a Class A Member upon his becoming a Tenant and shall remain a Class A Member for so long as he is a Tenant. A Person shall cease to be a Class A Member automatically when he ceases to be a Tenant; and

(b) **Class B.** The Class B Member shall be Declarant.

3.03 Voting Rights of Members. Every Tenant who is the lessee of Record of a Lot which is subject to assessment, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the leasehold ownership of any Lot which is subject to assessment.

(a) Each Class A Member shall be entitled to one (1) vote on each matter submitted to the Members for each Lot leased by such Class A Member which is not Exempt Property. Any Class A Member who is in violation of the Governing Documents, as determined by the Board of Directors in accordance with the provisions thereof or any other regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be leased by more than one Tenant, such Tenants shall be deemed to constitute a single Class A Member as to such Lot and shall collectively be entitled to a single vote for such Lot as to each matter properly submitted to the Members.

(b) The Class B Member shall be entitled initially to three (3) votes for each Lot that is not leased to a Tenant. The Class B membership shall terminate and become converted to Class A membership on December 31, 2012, or such earlier time as Declarant in its sole discretion, notifies the Association in writing.

(i) Notwithstanding the foregoing, in the event DHHL or Declarant wish to annex any additional properties pursuant to Section 7.01, the Class B membership shall be revised, or if the Class B membership has already terminated, re-established, to include all Lots on the annexed property owned by DHHL or Declarant, but not leased to a Tenant. In such event, the Class B membership shall cease and be converted to Class A membership one (1) year from the later to occur of (x) the Close Escrow of the final Lease or (y) the date of recordation of the Supplemental Kānāwai, for the last portion of such annexed property, or such earlier time as Declarant in its sole discretion, notifies the Association in writing.

(c) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with the Governing Documents.

3.04 Board of Directors. The business and affairs of the Association shall be managed by a Board of Directors elected by the Members or appointed by the Class B Member in accordance herewith. The initial number of Directors shall be three, which shall be increased to seven members on the date of the first annual meeting of the Association after the expiration of the termination of the Development Period, in accordance with the provisions of the Bylaws of the Association. As long as DHHL or Declarant has the status of a Class B Member, it shall have the right to appoint four (4) Directors. All Directors that are not appointed by DHHL or Declarant shall be elected by the Members in accordance with the Bylaws of the Association.

3.05 House Rules; Adoption of Further Rules and Regulations. Every Tenant and such Tenant's family members, guests, invitees and Persons on the Property on the authority or on behalf such Tenant shall comply with the House Rules and the other Governing Documents. The Board of Directors may make such additional rules and regulations consistent with the terms of this Kānāwai and the Articles and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy, and other matters concerning the Association's operations. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and other matters, including any matters requiring the approval of the Class A Members as provided in this Kānāwai, may be conducted by mail, ballot, or other reliable electronic means.

3.06 Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or its facilities, or from any wire, pipe, drain, conduit, or the like. The Association shall not be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or its facilities. No diminution or abatement of Assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or

improvements to the Common Areas or its facilities, or from any action taken by the Association to comply with any of the provisions of the Governing Documents or with any law or ordinance or with the order or directive of any Public Agency or other municipal or other governmental authority.

Article IV: Covenant for Assessments

4.01 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to carry out the business and responsibilities of the Association including, but not limited to:

- (a) The acquisition, construction, management, maintenance, and care, repair, or replacement of the Common Areas (including recreational areas and facilities, and private streets located on the Property) and services;
- (b) Obtaining, managing, and maintaining services for the Property, or sections thereof;
- (c) Promoting the recreation, health, safety, and welfare of the Members;
- (d) The enforcement of the Governing Documents; and
- (e) The collection and payment of all Assessments due from the Lots to the Association.

4.02 Establishment of Annual General Assessment and Services Assessment.

(a) The Association shall levy in each of its fiscal years an Annual General Assessment and a Services Assessment, if applicable, (hereinafter collectively referred to as the "Annual Assessments") against each Lot which is leased or occupied by a Person who is not DHHL, Declarant or a Participating Builder and which is not Exempt Property. The amounts of such Annual Assessments shall be established by the Board of Directors at least thirty (30) days in advance of each Annual Assessment Period. The first Annual Assessments on each Lot imposed pursuant to this Section 4.02(a) shall be adjusted according to the number of months remaining in the Annual Assessment Period from Close of Escrow.

(b) Declarant agrees to satisfy any operating budget deficit or shortage that the Association may incur or experience from the date of organization of the Association until the earlier to occur of: (i) the date of the first annual meeting of the Association; (ii) the date the Class B membership terminates; or (iii) the date that the Development Period expires. Any cumulative budget surplus shall be credited against any deficit.

(c) The amount of the Annual General Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots and the cost of operating the Association and enforcing the Governing Documents.

(d) A Services Assessment may be levied by the Board of Directors against certain sections or neighborhoods of the Property or against any particular housing type (i.e., detached type Dwelling Units), for special services which the Association provides such areas. The amount of the Services Assessment shall be determined by the Board of Directors according to the estimated cost of providing services or rights of use to the Lots in such section, which services or rights are not enjoyed by all of the Members of the Association. The amount of a Services Assessment shall be the same to each Lot in any section, but need not be uniform with the Services Assessment imposed upon Lots in other sections.

4.03 Special Assessments. In addition to the Annual General Assessment and Services Assessment authorized above, the Board of Directors may levy in any fiscal year of the Association, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Areas, including fixtures and personal property related thereto, for enforcing the Governing Documents, or for any other purpose for which the Association is responsible. Any such Special Assessment may be rescinded if, at a meeting called within sixty (60) days of notice of the Special Assessment, the majority of the votes of each class of membership who are voting in person or proxy agrees. Special Assessments shall be imposed against Lots which are not Exempt Property in the same proportions as Annual Assessments as provided in Sections 4.02(a), (c), and (d).

4.04 Date of Commencement of Assessments. The Annual General Assessment and Services Assessment, if any, provided for in this Article IV shall commence for each Lot subjected to such assessment in accordance with this Kānāwai on the first day of the month following the Close of Escrow of the Lot to a Class A Member. The first Annual General Assessment and Service Assessment (if any) shall be adjusted according to the number of months remaining in the calendar year.

4.05 Repair and Replacement Reserve. As a part of any Annual Assessment, the Board of Directors shall obtain from Tenants contributions to capital on a regular basis, which contributions will be used to establish a replacement and repair reserve ("Reserve Fund"). Such contributions shall be paid monthly or at such time as Annual Assessments are due and shall be in an amount to be designated from time to time by the Board of Directors. All of the funds shall be deposited in an account with a lending institution, the accounts of which are insured by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America or certificates of deposit in a federally insured lending institution. The replacement reserve may be expended only for the purpose of the replacement and repair of the Common Area. The Board of Directors shall specifically ensure that the Reserve Fund is adequately funded at all times to cover the cost of all necessary maintenance, repair or replacement of all of the private roads under its control within the Association. These funds shall be specifically earmarked for that purpose. In order to ensure that adequate funds are reserved for this purpose, the Board shall commission periodic inspections of all of the Association's private roads at least every three (3) years and adjust the funds held in the Reserve Fund to cover any needed or anticipated maintenance, repairs or replacement of the Association's roads.

4.06 Initial Assessment For Working Fund. A one-time assessment ("Initial Assessment") equal to one hundred and no/100 Dollars (\$100.00) is hereby levied against each

initial Tenant for the Lot leased by a Tenant, which Initial Assessment shall be paid by such Tenant to the Association at the Close of Escrow. Such Initial Assessment shall be utilized for commencing business of the Association and providing the necessary working fund for it.

4.07 Notice and Due Dates. Written notice specifying (a) the amount of each Annual General Assessment, Services Assessment and Special Assessment, and (b) the number and amounts of the installments by which each such Assessment is to be paid, shall be given to the Tenants of each Lot subject thereto. Each installment of an Annual General Assessment, Services Assessment and Special Assessment shall be due on the first day of each assessment period as defined by the Board of Directors.

4.08 Effect on Nonpayment of Assessments: Remedies of the Association. Any Assessment not paid within ten (10) days after the due date shall be delinquent and the Association may exercise any or all of the following remedies:

(a) Charge interest and a late fee (as determined by the Board) for Assessments which are not received by the tenth (10th) day of the assessment period;

(b) Bring an action at law or in equity against the Tenants of the Lot to collect the same;

(c) Foreclose the lien against the Dwelling Unit located on the Tenant's Lot. Such lien may be enforced by the Association in the same manner and to the same extent and subject to the same procedures as in the case of a foreclosure of a security interest under the laws of Hawaii; and

(d) Record the lien against the Tenant's lease interest in the Lot and the Structures thereon at the Department of Hawaiian Home Lands with the consent of the Hawaiian Homes Commission.

The Tenant personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment.

4.09 Default in Payment of Assessments.

(a) Each Assessment under this Article IV, shall be a separate, distinct and personal debt and obligation of the Member against whose Lot the Assessment is made; provided, however, that no Member shall have any personal liability for the payment of the debts and liabilities of the Association or for damage to any Common Area or any Lot not caused by such Member. Each Member by acceptance of a Lease of a Lot, whether or not so expressed in any such Lease, is deemed to covenant and agree to pay such Assessment to the Association. If the Member does not pay an installment of an Assessment when due, the Member shall be deemed in default and the amount of the unpaid Assessment, together with the amount of any subsequent unpaid Assessments, and any interest thereon at twelve percent (12%) per annum plus costs, including reasonable attorneys' fees, shall be and become a lien upon the Member's lease interest in such Lot and the Structures thereon upon recordation by the Association of a notice of default. Such lien shall be subordinate to the lien of any First Mortgage upon the Lot

and/or Dwelling Unit; provided, however, that no Mortgagee shall be required to collect any Assessment on a Lot. The Member's failure to pay an Assessment shall not be deemed or constitute a default under any Mortgage, unless otherwise provided in said Mortgage.

(b) The sale or transfer of any lease interest in the Lot and/or the Structures thereon shall be conditioned upon the payment, satisfaction and discharge of the lien for delinquent payments of Assessments which became due prior to such sale or transfer, and no such sale or transfer shall relieve such Lot or the purchaser or transfer from the obligation to pay prospective Assessments. The Association may record such notice of default within ninety (90) days following occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following recordation. The Association may seek satisfaction of the lien in accordance with rules and processes of DHHL, including the Kānāwai Enforcement Procedures. The Association may also maintain a suit to recover a money judgment for unpaid Assessments and such remedies shall be in addition to any other remedies provided by law for the enforcement of such Assessment obligation.

(c) Upon the request of an Association Member, the Association shall execute a certificate stating the amount of the unpaid Assessments secured by the lien upon any leasehold interest in the Lot and/or Dwelling Unit thereon. Such certificate and the fee for furnishing such certificate shall be conclusive upon the Association.

4.10 Delinquency. Any Assessment provided for in this Kānāwai which is not paid when such Assessment is due (the "delinquency date") and fees and charges described herein may be recovered if an Assessment becomes delinquent. The Association may, at its option and without waiving any of its judicial rights against such Tenant, pursue any available remedies, including, without limitation, bringing an action at law against the Tenant personally obligated to pay the same. Each Tenant vests in the Association, or its assigns, the right and power to bring all actions at law against such Tenant or other Tenants for the collection of such delinquent Assessments.

4.11 Certificate of Payment. The Association shall, upon written request by Tenant, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Annual General Assessments, Services Assessments and Special Assessments, if any, on a specified Lot have been paid. The Association shall furnish said certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

4.12 Subordination of the Lien to Mortgages. The lien of the Annual General Assessments, Services Assessments and Special Assessments provided for herein shall be subordinate only to the lien of any First Mortgage. The transfer of the Lease of any Lot shall not affect the lien of such Assessments. The sale or transfer of the lease interest in the Lot and/or any Structures thereon shall be conditioned upon the payment, satisfaction and discharge of the lien for delinquent payments of Assessments which became due prior to such sale or transfer. No sale or transfer shall relieve the Tenant of such Lot from liability as to any Assessments thereafter becoming due or from the lien thereof.

Article V: Design Review and Covenants Committee

5.01 Composition and Appointment. A Design Review and Covenants Committee (the "Design Committee") may be appointed by the Board of Directors; provided that the Design Committee shall consist of three (3) members initially appointed by the Declarant and shall not be required to meet any qualification for membership on the Design Committee. A designated employee or representative of the Declarant may sit ex-officio as a non-voting member of the Design Committee. The following persons are hereby designated as the initial Design Committee members:

1. Stewart Matsunaga
2. Jeffrey Fujimoto
3. Juan Garcia

The initial Design Committee members shall hold office until such time as they resign, or are removed or until a successor has been appointed as provided in this document.

From and after the date of the first annual meeting of the Association until the expiration of the Development Period, Declarant may appoint one (1) of the members of the Design Committee, which shall initially consist of three (3) members, but may thereafter be increased or decreased in size up to seven members by the Board of Directors, from time to time. Members of the Design Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Design Committee shall be filled by the Board of Directors to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Design Committee may continue to act until the vacancy has been filled. Except for members who have been designated by Declarant, any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate a Design Committee, the Board of Directors shall serve as the Design Committee.

5.02 Powers and Duties.

(a) The Design Committee shall serve as a design review board and shall regulate the external design, appearance, and location of the Lots and Structures thereon so as to enforce the design provisions of this Kānāwai, enforce the requirements of the recorded subdivision plats, and to preserve and enhance values and to maintain a harmonious relationship among Structures and the Property. The Design Committee shall comply with the terms, provisions, and requirements of the Governing Documents.

(b) The Design Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Kānāwai and the other Governing Documents. Any decision or determination of the Design Committee may be appealed by a Member affected thereby to the Board of Directors.

5.03 Submission of Plans to Design Committee for Approval. Except for such Structures as may be constructed by Declarant or Structures constructed by a Participating

Builder, no Structure of any kind whatsoever shall be commenced, erected, placed, moved onto, or permitted on any Lot, nor shall any existing Structure upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof until plans and specifications therefore shall have been submitted to and approved in writing by the Design Committee and DHHL. Such plans and specifications shall be in such form and shall contain such information as the Design Committee may reasonably require, but shall in all cases include:

- (a) A site plan showing the location of all proposed and existing Structures on the Lot and all existing Structures on adjoining Lots;
- (b) Exterior elevations for the proposed Structures;
- (c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed buildings; and
- (d) Description of the plans or provisions for landscaping or grading.

The provisions of this Section 5.03 shall not apply to Land Development Activity as defined in Section 1.21. Any plans and specifications of any Participating Builder which have been approved by DHHL or Declarant shall not be subject to any review or approval by the Design Committee.

5.04 Approvals/Disapprovals. Any approval or disapproval of a requested action by the Design Committee shall be in writing. In denying any application, the Design Committee shall specify the reasons for such denial. The Design Committee may approve an application subject to such conditions and qualifications as the Board deems appropriate to enforce the design provisions of this Kānāwai or the Design Guidelines. Upon approval by the Design Committee, such application shall be submitted by the Tenant to DHHL for its approval.

5.05 Failure of the Design Committee to Act. If the Design Committee shall fail to act upon any request submitted to it within forty-five (45) days after a complete submission thereof in a form acceptable to the Design Committee, such request shall be submitted to the Board of Directors for approval. If the Board of Directors shall fail to act within thirty (30) days after submission to the Board of Directors, then such request shall be deemed to have been approved as submitted, and no further action shall be required. Submission of incomplete plans shall not be considered valid submissions triggering the deadlines stated above and shall not be recognized by the Design Committee or the Board of Directors.

5.06 Design Guidelines, Rules, Regulations, and Policy Statements. Declarant has adopted, subject to periodic amendment by Declarant and/or the Association, Design Guidelines which set forth general standards for both the initial development of the Community and guidelines for renovating, repairing and rebuilding Structures within the Community; provided, however, that no amendment of the Design Guidelines shall be effective without the written approval of DHHL. The Design Guidelines are intended to provide design professionals with standardized design vocabularies and materials intended to preserve the quality and overall appearance of the Community. In the event of any conflict between the Design Guidelines and this Kānāwai, this Kānāwai shall prevail.

The Design Committee shall enforce the Design Guidelines, as amended. The Design Committee may recommend, from time to time, subject to the approval and adoption of the Board of Directors, additional reasonable rules and regulations pertaining to its authorized duties and activities under this Kānāwai and may from time to time issue statements of policy with respect to design standards and such other matters as it is authorized to act on. The Design Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

(a) The Design Committee shall hold regular meetings as necessary. Meetings of the Design Committee may be called by the chairman and by a majority of the members of said committee;

(b) A majority of the members of the Design Committee present at any meeting shall constitute a quorum;

(c) The Design Committee shall maintain minutes of its meetings and a record of the votes taken thereat;

(d) All meetings of the Design Committee shall be open to the Members of the Association and any vote of the Design Committee shall be taken at an open meeting. Nothing contained herein, however, shall prevent the Design Committee from meeting in closed session or executive session in accordance with State and Federal laws or regulations;

(e) A copy of all minutes, rules, regulations, and policy statements of the Design Committee shall be filed with the records of the Association and shall be maintained by the Association as a permanent public record. The Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations, and policy statements available to any Member for copying.

5.07 Expenses of the Design Committee. The Design Committee may charge reasonable fees for the processing of any requests, plans, and specifications including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Design Committee; provided, however, that no member of the Design Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association except upon authorization by the Board and upon approval by: (a) 66 2/3% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum of 15 percent is present; and (b) the Class B Member voting in person or by proxy at such meeting.

5.08 Right of Entry. The Association and the Design Committee through their authorized officers, employees, and agents shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Structure thereon is in compliance with the provisions of this Article and Article VI without the Association or the Design Committee or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.09 **Liability.** DHHL, Declarant, the Design Committee and any Design Committee member shall not be liable to the Association or to any Tenant or to any other Person for any damage or loss on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (c) the development of any Lot or of the Community Area, or (d) the execution and filing of any certificate or the accuracy of any facts stated therein. DHHL, Declarant, the Design Committee, or any Design Committee member may, but is not required to, confer with the Association or any Tenant or his or her architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee. An approval or disapproval by DHHL, Declarant, or the Design Committee does not mean plans, drawings or specifications meet or do not meet the building code of the City and County of Honolulu or any Public Agency.

5.10 **Land Development.** Notwithstanding any other provisions of this Kānāwai, any Land Development Activity (as defined in Section 1.21) shall not require the approval of or be subject to review by the Design Committee. This provision shall not be construed in any manner as a limitation upon the right of DHHL or Declarant to review and approve any plan or modification thereof of any Participating Builder.

5.11 **Exemption of DHHL and Declarant.** As provided elsewhere in the Governing Documents, neither DHHL, nor any successor to DHHL (as Declarant) designated as such in a recorded instrument which wholly or partially assigns DHHL's rights hereunder, are subject to the provisions of the Governing Documents pertaining to design control. Any Structures constructed by DHHL, Declarant or a Participating Builder shall automatically be in compliance with the Design Guidelines and the other Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a Tenant as to any Lot in the material, texture, color or appearance of any such Structure upon such Lot. Normal maintenance, repair, replacement, restoration or reconstruction established by any Tenant in the event of a destruction, in substantial conformance with the Structure constructed by DHHL, Declarant or a Participating Builder shall not be deemed to be a Structure that requires approval pursuant to the provisions of this Article.

Article VI: General Restrictions on the Use of Lots and Improvements to be Made Thereon

6.01 **Zoning Regulations.** The Property shall not be used for any purpose other than as permitted in the State laws, the County zoning ordinances or the laws, rules, or regulations of any governmental authority in force and effect on the date of recording of this Kānāwai, as the same may be hereafter from time to time amended. No building shall be erected, altered, placed, or permitted to remain on any such Lot other than one used as a single family Dwelling Unit. This restriction shall not apply to any use for which a special exception under local government zoning ordinances or other governing regulations, as the same may be hereafter from time to time amended, is finally granted provided such use is in conformance with the Governing Documents and is approved in writing by the Design Committee and DHHL. The right, however, to further limit or restrict the use of a particular Lot is reserved by DHHL under the provisions hereof.

6.02 Compliance with Project Conditions. Development of the Property has been and continues to be subject to various Project Conditions intended in part to promote the general health, safety, and welfare of the Members and the public at large, and to promote, protect, and preserve ecosystems as well as other natural, cultural, and historic resources located within and around the Property. Therefore, in order to ensure the continued future use and enjoyment of the Community for its intended purposes by all Members, the Association shall assume all continuing obligations of Declarant under the Project Conditions and the Association shall defend, indemnify, and hold Declarant and DHHL and their respective affiliated entities, directors, officers, commissioners, employees, agents and representatives harmless from all liabilities arising out of the failure of the Association to assume and comply with such conditions. Unless otherwise set forth in this Kānāwai, a Supplementary Kānāwai, or other agreement, all costs and expenses incurred by the Association in complying with the Project Conditions shall be a common expense of the Association.

6.03 Structures. The architectural character of all Structures, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of a Structure) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Design Committee, harmonious in terms of type, size, scale, form, color, and material. The repair, replacement, repainting, resurfacing, or restoration of any Structure originally approved by the Design Committee, Declarant or DHHL shall not be subject to the review or approval of the Design Committee provided that, following any such repair, replacement, repainting, resurfacing, or restoration of any such Structure, the external appearance of such Structure shall be substantially identical with the appearance of said Structure as originally approved. Except as otherwise herein provided, no Structure shall be painted, surfaced, or resurfaced with any material unless and until approved in writing in accordance with objective guidelines, including without limitation the Design Guidelines, established by the Design Committee. Screens or parapets shall be used to organize and aesthetically shield mechanical equipment and appurtenances from public view.

6.04 Screens and Fences. Except for any fence installed or approved by Declarant or DHHL, or the Association, no fence or screen shall be installed on a Lot except in accordance with the Design Guidelines and with the prior written approval of the Design Committee. Any fencing which may be installed in the Common Area shall be maintained by the Association.

6.05 Signs and Lighting. The location, color, nature, size, design, and construction of all signs or outdoor lights shall be approved in writing by the Design Committee before the installation thereof.

6.06 Vehicles and Parking. Any vehicle parked on the Property must not cause damage to the infrastructure of the Property and shall not be parked in marked "No Parking" areas at the end of Kumuhau Street and Kumuhau Place cul-de-sacs. No disabled vehicle or vehicle on which current registration plates or other required permits, such as inspection stickers, are not displayed shall be parked on any Lot or on Common Area. The repair or extraordinary maintenance of vehicles shall not be carried out in a manner that is visible from any Lot or on the Common Areas. The Association may enforce the provisions of this Section by towing any non-complying vehicle at the vehicle Tenant's sole risk and expense. This provision shall not

preclude commercial vehicles located on the Property temporarily (less than 24 hours) to provide services to the Association or a Tenant.

6.07 Animals. Tenants may keep guide animals and a reasonable number of orderly domestic pets. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Any pet or animal causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon fourteen (14) days' written notice from the Board of Directors. Any Tenant who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Tenant, and Declarant free and harmless from any and all loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. DHHL and other appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances.

6.08 Garages. No garage or carport shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages or carports. No garage or carport may be converted into or used for living space, unless a new garage or carport is constructed on the same Lot.

6.09 Air and Water Pollution. No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards applicable thereto to be established by the Design Committee, and approved by the Board of Directors, which standards shall at a minimum meet the requirements of Federal and State law and any regulations thereunder applicable to the Property. No waste or any substance or materials of any kind shall be discharged into any private or public sewer or drainage facility serving the Property, or any part thereof, in violation of any regulations of any private or public body having jurisdiction. No person shall dump garbage, trash, or other refuse into any waterway or drainage facility on the Property.

6.10 Leases. No Tenant of a Lot or Dwelling Unit shall lease to another any such Lot or part thereof or any such Dwelling Unit without the prior written consent of DHHL, which consent may be withheld by DHHL in its sole and absolute discretion, and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Kānāwai and the other Governing Documents, and that any failure by the Tenant to comply with the terms of such documents shall be a default under such Tenant's Lease. Board shall be provided with copies of leases on request.

6.11 Landscaping. All Lot areas not occupied by Structures, hard-surfacing, vehicular driveways, or pedestrian paths, shall be kept planted with grass, trees, or shrubs or other ground covering or landscaping in conformance with the standards set by the Design Committee and approved by the Board of Directors and/or as set forth in the Design Guidelines. Such standards will take into consideration the need for providing effective site development to control drainage and erosion and maintain foundation integrity on adjoining lots.

6.12 Maintenance of Premises and Improvements. Each Tenant shall at all times keep his Lot, and the Dwelling Unit, buildings, improvements, and appurtenances located

thereon, in a safe, clean, neat, and sanitary condition. Appropriate maintenance shall include, but not be limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all Structures all in a manner and with such frequency as is consistent with good property management, with the exception of those Lots on which the Association may provide maintenance of landscaping. All Tenants of Lots on which stormwater management or storm drainage easements exist must keep such area free of debris, landscaping, or fences so as not to impede drainage. The Tenant shall comply with the Governing Documents and all laws, ordinances, and regulations pertaining to health, safety, and pollution, and shall provide for storage and removal of trash and rubbish from his Lot in a manner to be approved by the Design Committee.

(a) Each Tenant shall be responsible for the maintenance of any fences or walls, or portions thereof, that are located within or on the boundary of his Lot, in accordance with the provisions of the Governing Documents.

(b) All slopes and terraces shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property, in accordance with the provisions of the Governing Documents.

(c) Each Tenant shall maintain and repair any yard drain facilities located within his Lot as follows:

(i) Such yard drain facilities shall be maintained to a condition that will ensure that drainage is not blocked and water does not pond to the extent that it would damage any other Lot or Common Area or that will not cause water to pond upon any adjacent Lot or Common Area.

(ii) In the event that any yard drain facilities were installed or constructed to service more than one Lot, no Structures or other improvements shall be commenced within any such portion of a Lot on which the yard drain facilities are located that would interfere with the drainage to or through such yard drain facilities from or to any such other Lots unless adequate provisions have been made to relocate the drainage flow to the satisfaction of the Design Committee.

Tenants shall be relieved of their obligations and responsibilities under this Section to the extent that any of such obligations and responsibilities have either been delegated to, and assumed by (i) the Association, pursuant to the provisions of this Kānāwai or any Supplementary Kānāwai annexing additional real property thereto, or any easement or license agreement or other document transferring such responsibility or obligation to the Association, or (ii) any Public Agency.

6.13 Enforcement of Maintenance. The Design Committee, or its agent, during normal business hours, shall have the right (after 30 days' notice, by regular or certified mail or posted on door with a witness, to the Tenant of any Lot involved, setting forth the maintenance action to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Tenant) to do any and all maintenance work reasonably necessary in the written opinion of the Design Committee, to keep such Lot, whether unimproved, improved or

vacant, and the Structures thereon, in neat and good order, such cost and expense to be paid to the Association upon demand and collected in accordance with Article IV of this Kānāwai. The Design Committee, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Tenant, any hedge, tree or any other planting that, in the written opinion of the Design Committee, by reasons of its location on the Lot, or the height to or the manner in which it is permitted to grow, is detrimental to the adjoining Lots contrary to the Governing Documents or is unattractive in appearance.

6.14 Maintenance During Construction. During construction it shall be the responsibility of each Tenant to ensure that construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot.

6.15 Land Development Activity. The foregoing provisions of Article VI shall not be applicable to Land Development Activity. Without limiting the generality of the foregoing exclusion, DHHL, Declarant and their respective authorized Participating Builders shall have the right to carry on the following activities in connection with Land Development Activity and construction of Dwelling Units:

(a) To construct, install, operate, and/or maintain on the Property one or more construction or management control offices in Dwelling Units, field office trailers, or other temporary facilities; and

(b) To construct, install, operate and/or maintain one or more model homes (or Dwelling Units) and sales offices on the Property. Such models and offices may be owned or leased by DHHL, Declarant or by any Person designated by DHHL or Declarant. Land Development Activity and sales activity shall in all events be subject to the local zoning ordinances, and all other applicable laws, rules, and regulations of governmental authorities.

6.16 Antennae and Satellite Dishes. Notwithstanding the foregoing, no video or television antennae, including a satellite dish with a diameter or diagonal measurement in excess of the size permitted pursuant to the Telecommunications Act of 1996, shall hereafter be erected, constructed, placed or permitted to remain within the Property. Notwithstanding the foregoing restriction, temporary use of such antennae for special events shall be permitted, subject to the Design Guidelines, and cellular telephone towers approved by the Design Committee shall be permitted in such locations within the Property as are approved by the Design Committee.

Article VII: Annexations

7.01 Additions by DHHL. DHHL hereby reserves the right (but not the obligation) at any time to submit, by recordation of a Supplemental Kānāwai, or annex to this Kānāwai, any additional land, including the land which lies within the land area represented in Exhibit "B". Action under this Section shall not require the prior approval of the Class A Members, the Association or their Mortgagees. Any such land subjected to this Kānāwai shall be subject in all respects to each and every provision of this Kānāwai, as well as any additional terms and provisions at DHHL's discretion.

7.02 **Withdrawable Real Estate.** DHHL has the unilateral right, without the consent of the Association, any Tenant, Member or Mortgagee, to execute and record an amendment to the Kānāwai withdrawing any portion of the Property which DHHL owns and not leased to a Tenant from the operation of this Kānāwai.

Article VIII: Easements and Licenses

8.01 **Declarant Rights.** Declarant reserves the right to all of the easements and licenses established for the benefit of DHHL and Declarant in the Governing Documents with respect to the Property.

8.02 **Blanket License.** A non-exclusive license is hereby granted in favor of the Association over the Lots and any Common Area for the installation of landscaping or construction of signage, a common cable television system, a common sprinkler, or any other item installed for the common enjoyment and/or benefit of the Tenants (including, without limitation, electricity, gas, and telephone equipment). Such license is further granted to the Association for the purpose of repairing and maintaining any of the foregoing items so constructed. Any entry upon any Lot or any area granted or licensed to the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Tenant covenants not to damage or destroy any portion of an item so constructed and shall hold the Association harmless from the cost of repairing or replacing any portion damaged or destroyed by such Tenant, his family, his guests or invitees.

8.03 **Association Entry.** The Board of Directors of the Association shall have the right to permit non-exclusive entry over any part of the Common Area for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association. The Association, the managing agent, and any other Persons authorized by the Board of Directors, are hereby granted the right of access over and through any portion of the Property (excluding any Dwelling Units), in the exercise and discharge of their respective powers and responsibilities, including, without limitation, to make inspections, correct any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates the Governing Documents. Each Tenant shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness, or failure to comply with the Governing Documents for which such Tenant is responsible.

8.04 **Ingress and Egress.** Although the roadways within the Property may be leased or licensed, to the County or Association, DHHL will continue to own the fee simple interest in the roadways, and accordingly, will have the right, together with the right to grant easements, licenses and leases to others without the consent of any party whatsoever, over, in and to all streets within the Property for ingress, egress, use and enjoyment; provided, however, that DHHL will not expand or increase such roadways to include any Lots leased to Tenants without the notice to, and consent of, any Mortgagee of a Mortgage guaranteed or insured by HUD.

8.05 **Construction and Marketing Activities.** Notwithstanding any Lease, as the fee owner of the Property, DHHL has the right, as to any portion of the Property, together with the right to grant and transfer same to others:

(a) **Improvements.** Easements and licenses (i) over the Common Area for the purpose of installing, constructing, erecting, operating and maintaining thereon, therein or thereunder, roads, streets, walks, driveways, parkways and park areas, and (ii) over the Property for the purpose of installing, constructing, erecting, operating, maintaining, repairing, replacing, restoring and reconstructing electric, telephone, cable television, telecommunication, water, gas, irrigation, sanitary sewer, drainage, and similar service facilities;

(b) **Cable Television.** The right to emplace on, under or across the Property transmission lines and other facilities for cable television, community antenna television systems and other communications and the right to enter upon the Property to service, maintain, repair, reconstruct and replace said lines or facilities;

(c) **Construction and Sales.** Easements and licenses for construction, display, maintenance, sales and exhibit purposes over the Common Area in connection with the lease of Lots and construction of Structures within the Property, including, without limitation easements and licenses over the Common Area for construction signs and "for-lease signs";

(d) **Easements Shown on Subdivision Maps.** Easements and licenses over the Property as shown and described on any Subdivision Map, which may include, but not be limited to, the following:

(i) Public Trails. An easement or license for ingress and egress over any bicycle, pedestrian, equestrian or other trails and walkways. The reservation or granting of this easement or license shall not imply any right of public use of the Property.

(ii) Utilities. Easements and licenses for the installation and maintenance of electric, telephone, cable television, communication, water, gas, sanitary sewer lines and drainage facilities; and

(iii) Other Purposes. Easements and licenses for any other purposes as designated on the Subdivision Maps, which may include, but not be limited to, easements for ingress, egress and drainage and the installation and construction, maintenance, repair, replacement, restoration and reconstruction of Structures.

(e) **Completing Improvements.** Easements and licenses over the Common Area for the purpose of completing improvements made by DHHL or Declarant provided that access for such purpose is not otherwise reasonably available; and

(f) **Special Events.** An easement or license over the Common Area for the purpose of conducting public and private functions, educational, cultural, artistic, musical, recreational, sporting and entertainment activities and activities of general community interest at such locations and times as DHHL, in its sole discretion, deems appropriate. Each Tenant, by accepting a Lease or other instrument leasing any Lot, acknowledges and agrees that the exercise of this easement or license may result in a temporary increase in traffic, noise, gathering of

crowds, and related inconveniences, and each Tenant agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or license. The Association shall not take any action which would interfere with or otherwise attempt to restrict the exercise of this easement or license.

The easements and licenses granted pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Tenants of the Property and any damage, repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement or license that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

8.06 Support. Settlement and Encroachment.

(a) **Licenses.** There is hereby reserved to DHHL, together with the right to grant and transfer the same, reciprocal licenses as follows:

(i) A license appurtenant to each Lot which is contiguous to another Lot or the Common Area which Lot shall be the dominant tenement and the contiguous Lot or Common Area shall be the servient tenement; and

(ii) A license appurtenant to the Common Area which is contiguous to a Lot, which the Common Area shall be the dominant tenement and which contiguous Lot shall be the servient tenement.

(b) **Purposes.** Said license shall be for the purposes of:

(i) Encroachments caused by engineering errors, errors in construction, reconstruction and repair;

(ii) Support and accommodation of the natural settlement or shifting of any portion of the Structures;

(iii) Minor encroachments by reason of a roof or eave overhang;

(iv) Encroachment of foundations, footings, utilities and other appurtenances or fixtures which, in the construction of the Structures upon the dominant tenement or from any reconstruction or modifications of such Structures, project beyond the external boundaries of a Lot; and

(v) Maintenance of all such Structures by the Association, Tenant or other entity who is required to perform such maintenance pursuant to the provisions of the Governing Documents or the grant of a license for such purpose.

(c) **Term.** The licenses shall extend (i) for as long as the physical boundaries of the Structures, after such construction, reconstruction, repairs, shifting, settlement, or other movement, are in substantial conformance with the description of such physical boundaries contained in this Kānāwai, and (ii) for whatever period the encroachment exists.

The rights and obligations of Tenants of the dominant tenements shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall a license for encroachment be created in favor of a Tenant of the dominant tenement if said encroachment occurred due to the willful misconduct of any such Tenant. In the event any portion of a Structure on the Property is partially or totally destroyed and then repaired or rebuilt, each such Tenant agrees that minor encroachments over adjoining Lots or Common Area shall be licenses for the maintenance of said encroachments as long as they shall exist.

(d) **Licenses for Tenants.** Licenses for reasonable surface drainage and for drainage over, through and across drainage improvements constructed by Declarant within the Property for the purpose of accepting drainage from the Lots, when granted and conveyed, shall be appurtenant to, and for the benefit of, the Lot benefiting from such licenses; and

(e) **Licenses for Association.**

Licenses for reasonable surface drainage and for drainage over, through and across drainage improvements constructed by Declarant within the Property for the purpose of accepting drainage from the Common Area, when granted and conveyed to the Association, shall be appurtenant to, and for the benefit of, such Common Area; and

8.07 Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, telephone and cable television lines, other forms of communication equipment or facilities, or drainage facilities are installed within the Property, the Association or any Tenant of any Lot served by said connections, lines or facilities shall have the right, and there is hereby reserved to DHHL and Declarant, together with the right to grant and transfer the same to the Association and any such Tenant, a license to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Common Area and such Tenant's Lot, and to enter, or have utility or cable television companies enter upon any portion of the Property, including without limitation, upon the Lots in or upon which said connections, lines or facilities or any portion thereof lie, to repair, replace and generally maintain said connections, lines and facilities as and when the same may be necessary, provided that any damage caused by such entry shall be repaired by the Association, such Tenant, utility or cable television company as promptly as possible after completion of work thereon.

8.08 Clustered Mailboxes. There is hereby reserved to DHHL, together with the right to grant and transfer same, licenses over the Property to the extent necessary to comply with any requirements of the United States Postal Service and the appropriate Public Agency to cluster mailboxes for the delivery, deposit and pickup of United States mail, for maintenance, repair and replacement of such mailboxes and for ingress and egress to and across that portion of the Property to the extent necessary for all such purposes. The rights and obligations of each Tenant shall be limited to the mailbox that services such Tenant and any appurtenances thereto and the portion of the Property on which such mailbox and appurtenances are located and to the extent necessary to access said mailbox for all of the foregoing purposes.

8.09 Subordination. Except as may be otherwise provided in the grant of a license, any license granted in favor of a Public Agency shall be prior and superior to all other easements

and licenses described herein, and any license granted pursuant to the provisions of this Article to a utility shall be prior and superior to all other licenses described herein except any license or right in favor of DHHL, Declarant or a Public Agency. By acceptance of a granting of any license described in this Kānāwai, whether or not so stated in such conveyance document, each licensee agrees that such license shall be subordinate to any such prior and superior easements and licenses and further agree to execute any document acknowledging such subordination that may be required by the holder of any such prior easement or license.

8.10 Delegation of Use. Any Tenant may delegate his right of enjoyment to the Common Area to the members of his family who reside on his Lot subject to the covenants, conditions and restrictions contained in the Governing Documents.

8.11 Waiver of Use. No Tenant may exempt himself from personal liability for Assessments duly levied by the Association, or release the Lot leased by him from the charges and other provisions of the Governing Documents by waiver of the use and enjoyment of the Common Area or the abandonment of his Lot.

8.12 Hazardous Materials.

(a) Each Tenant and the Association shall indemnify DHHL against and hold DHHL harmless from any and all costs and expenses (including reasonable attorney's fees), losses, damages (including foreseeable or unforeseeable consequential damages) and liabilities incurred by DHHL which may arise out of, or may be directly or indirectly attributable to, (i) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, discharge, disposal or presence of any hazardous material, substance or waste or the like as may be defined in any Hazardous Materials Law, on, within, under or about such Tenant's Lot (as to each such Tenant) and the Common Area, (ii) DHHL's investigation and handling (including the defense) of any Hazardous Materials Claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof, and (iii) DHHL's enforcement of this Kānāwai, including this Section, whether or not suit is brought therefor.

(b) As used in this Kānāwai, the term "Hazardous Materials Laws" shall mean and include all federal, state or local laws, ordinances, rules or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, within, under or about the Lots and the Common Area, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state or local laws or ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

(c) For purposes hereof, the term "Hazardous Materials" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and gasoline products or

related materials and any and all substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" under the Hazardous Materials Laws.

This Section 8.12 shall run with the land of the Lots and the Common Area, and shall survive (1) the assignment, transfer or termination of the Lease for each Tenant's Lot and the leases or licenses of the Common Area, and (2) any transfer of an interest in the Lots and the Common Area by any security agreement, including a Mortgage, and (3) any default or foreclosure of such security agreement and shall be included in any document assigning or transferring the Lots and tenants Common Area and be binding on the Tenant and Association and all subsequent Tenants of the Lots and subsequent tenants or licenses of the Common Area.

8.13 Walls and Fences. Perimeter walls and fences ("Perimeter Walls and Fences") have been or will be constructed within portions of the Community affecting various Lots (collectively, the "Perimeter Wall and Fence Lots"), and are significant features of the Community, serving the primary functions of facilitating privacy and security within, as well as the aesthetic appearance of, the Community. Some of the Perimeter Walls and Fences may be located within easement or license areas to be granted for access, maintenance and other purposes ("Perimeter Wall and Fence Easements"), affecting various Lots, which Perimeter Wall and Fence Easements will be granted in favor of the Association, to the extent that the Association is responsible for the repair and maintenance of said Perimeter Walls and Fences.

In addition, other walls and fences ("Lot Walls and Fences") may be located within various Lots ("Wall and Fence Maintenance Lots") and the Tenants of these Wall and Fence Maintenance Lots shall be responsible for maintaining and repairing, at their cost and expense, the portions of the Lot Walls and Fences that are located on such Tenant's Lot, including Lot Walls and Fences located on the boundary between Lots in which event the Tenants of both of such Lots shall be jointly and severally responsible for the maintenance and repair of such Lot Wall and Fence in a good and safe condition on a continuous basis ("Wall and Fence Maintenance Obligation"). No Lot Wall or Fence may be damaged, altered or modified by any Tenant or the Association without the prior written consent of Declarant. Each Tenant understands and agrees that the Wall and Fence Maintenance Lots may be subject to an easement or license for access, maintenance or other purposes ("Lot Wall and Fence Easements") and/or a Wall and Fence Maintenance Obligation, and the Tenants of the Wall and Fence Maintenance Lots hereby agree that such Lot Walls and Fences shall be preserved and shall grant to the Association, Declarant and DHHL access to the Lot Walls and Fences, and each Tenant of a Wall and Fence Maintenance Lot hereby agrees to maintain and repair the Lot Walls and Fences that are located on such Tenant's Lot or on the boundary of such Tenant's Lot and an adjoining Lot in accordance with the Wall and Fence Maintenance Obligation.

The Perimeter Walls and Fences and the Lot Walls and Fences are collectively referred to as the "Walls and Fences" and the Perimeter Wall and Fence Lots and the Wall and Fence Maintenance Lots are collectively referred to as the "Wall and Fence Lots". The Perimeter Wall and Fence Easements and the Lot Wall and Fence Easements are collectively referred to as the "Wall and Fence Easements".

The Walls and Fences present certain risks of danger to persons, especially children, and property. Accordingly, each Tenant hereby agrees to take all necessary precautions, including maintaining such Lot Walls and Fences in accordance with such Tenant's Wall and Maintenance Obligation, to protect himself or herself, and such Tenant's family, guests, invitees and their respective property from the dangers presented by the Walls and Fences. By entering into a Lease, each Tenant shall be deemed to have assumed any and all risks, disturbances, liabilities, nuisances, hazards and damages associated with the location of Walls and Fences, and Wall and Fence Easements, on their respective Lots, and each Tenant agrees to maintain, preserve and not disturb, damage, alter or modify, and will take affirmative action to prevent any person or thing from destroying, damaging, disturbing, altering or modifying, such Walls and Fences, and, in addition, with respect to a Wall and Fence Maintenance Lot, will satisfy the Wall and Fence Maintenance Obligation and all requirements with respect thereto imposed by Declarant, DHHL or any other Public Agency, or any other law, ordinance, rule or regulation.

Each Tenant will indemnify, defend and hold harmless Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from acts or omissions of such Tenant and such Tenant's family, guests and invitees with respect to the Walls and Fences and Wall and Fence Easements, or the failure of such Tenant to fully satisfy the Wall and Fence Maintenance Obligation, and will release Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from, and will intentionally waive, all claims for damages or losses resulting from the Walls and Fences and Wall and Fence Easements. DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself and its successors and assigns to modify, relocate, realign said Walls and Fences and/or Wall and Fence Easements, and to designate and grant said modified Wall and Fence Easements, to the extent determined by DHHL or its successors and assigns to be necessary or desirable to preserve or further the integrity and functions of the Walls and Fences and/or Wall and Fence Easements, to the Association, any appropriate Public Agency and/or any public utility or other person or entity, and DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself, its successors and assigns to perform all acts, on behalf each Tenant, as well as for the benefit of DHHL and its successors and assigns and/or lien holders of the Community, which DHHL shall determine to be necessary or desirable to effect the same; provided that no portion of any Wall or Fence or Wall and Fence Easement may be relocated or realigned more than five (5) feet from its location existing on the date that the Lease demising the affected Lot to such Tenant is Recorded, without the written consent of the Tenant of such Lot, which consent shall not be unreasonably withheld or delayed; provided further that if such Tenant fails to consent or reasonably withhold its consent within thirty (30) days after receipt of DHHL's request for said consent, such Tenant shall be deemed to have given the requested consent. Each Tenant does consent to any and all such acts performed by Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors or assigns as provided hereinabove and agrees to assume such obligations as may reasonably be imposed by the Wall and Fence Easement and/or the Wall and Fence Maintenance Obligation or any other instrument effecting any of the foregoing, and further agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same. Each Tenant does hereby appoint Declarant, DHHL and their respective successors and assigns, as such Tenant's attorney-in-fact with full power of

substitution to execute and deliver such documents and instruments and to do all such things on such Tenant's behalf to effect the same, which grant of such power, being coupled with an interest, is irrevocable for the term of said Wall and Fence Easements and the Wall and Fence Maintenance Obligation and such other instruments, and shall not be affected by the disability of any party or parties. In addition, any Mortgagee or lien holder which obtains a Mortgage, security interest or other liens encumbering a Lot or any interest therein, by virtue of obtaining such Mortgage, security interest or lien, will agree that such Mortgage, security interest or lien shall be automatically subordinate to said Wall and Fence Easements and Wall and Fence Maintenance Obligation and any and all easements, leases, licenses and/or right-of-way, over, under or on the Lots granted and/or received pursuant to the Wall and Fence Easements and/or this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Mortgage insured or guaranteed by HUD shall be subordinate to any Wall and Fence Easement, easement, lease, license or right-of-way granted over, under or on the Lot encumbered by said Mortgage after said Mortgage was Recorded, without the consent of the then holder of said Mortgage.

8.14 Drainage. Drainage within the Community will be controlled by several surface and underground drainage facilities (collectively, the "Drainage Facilities") some of which will be located within easements and/or licenses to be designated and granted for drainage, access, maintenance and other purposes ("Drainage Easements"), affecting various Lots ("Drainage Lots") to minimize soil erosion and flooding by conveying flows into various drainage facilities. No Structures may be constructed over, under or across any Drainage Facilities. Each Tenant understands and agrees that Drainage Facilities may be located on Drainage Lots, and each Drainage Lot is subject to a Drainage Easement, and each Tenant agrees to preserve such Drainage Facilities and prohibit anyone, including the such Tenant's family, guests and invitees from entering into, or disturbing, such Drainage Facilities and hereby grants to the Association, DHHL and Declarant access to these Drainage Facilities. By accepting or acquiring an interest in a Drainage Lot, the Tenant thereof shall be deemed to have assumed any and all risks, disturbances, liability, nuisances, hazards and damages associated with the Drainage Facilities and/or Drainage Easements, and such Tenant agrees to maintain, preserve and not disturb, and will take affirmative action to prevent any person or thing from destroying, damaging or otherwise disturbing such Drainage Facilities, and, in addition, shall satisfy all requirements with respect thereto imposed by the Declarant or any Public Agency, or any other law, ordinance, rule or regulation. Each Tenant of a Drainage Lot will indemnify, defend and hold harmless Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from acts or omissions of such Tenant and such Tenant's family, guests and invitees with respect to the Drainage Facilities and/or the Drainage Easements, and will release Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from, and will intentionally waive, all claims for damages or losses resulting from the Drainage Facilities and/or the Drainage Easements. DHHL, as the fee simple owner of all Lots and the Common Area, has, and does hereby reserve, the right (but not the obligation), on behalf of itself and its successors and assigns to modify, relocate, realign said Drainage Facilities and/or Drainage Easements, and to designate and grant said modified Drainage Easements, to the extent determined by DHHL or its successors and assigns to be necessary or desirable to further the purposes of the Drainage Facilities and/or Drainage

Easements, to the Association, any Public Agency and/or any public utility or other person or entity, and DHHL has, does hereby reserve, the right (but not the obligation), unto itself, its successors and assigns, to perform all acts, on behalf each Tenant of a Drainage Lot, as well as for the benefit of DHHL and/or other Tenants and lien holders of the Community, which DHHL, or its successors or assigns, shall determine to be necessary or desirable to effect the same; provided that no portion of any such Drainage Facilities or Drainage Easements may be relocated or realigned more than five (5) feet from its location existing on the date that the Lease demising the affected Lot to such Tenant is Recorded, without the written consent of the Tenant of such Lot, which consent shall not be unreasonably withheld or delayed; provided further that if such Tenant fails to consent or reasonably withhold its consent within thirty (30) days after receipt of DHHL's request for said consent, such Tenant shall be deemed to have given the requested consent. Each Tenant of a Drainage Lot does consent to any and all such acts performed by Declarant, or its assigns, as provided hereinabove and agrees to assume such obligations as may reasonably be imposed by the Drainage Easements or any other instrument effecting any of the foregoing, and further agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same. Each Tenant of a Drainage Lot does hereby appoint DHHL and its successors and assigns, as such Tenant's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do all such things on such Tenant's behalf to effect the same, which grant of such power, being coupled with an interest, is irrevocable for the term of said Drainage Easements and such other instruments, and shall not be affected by the disability of any party or parties. In addition, any Mortgagee or lien holder which obtains a Mortgage, security interest or other liens encumbering a Drainage Lot or any interest therein, by virtue of obtaining such Mortgage, security interest or lien, will agree that such Mortgage, security interest or lien shall be automatically subordinate to said Drainage Easements and any and all easements, licenses and/or right-of-way, over, under or on the Drainage Lot granted and/or received pursuant to the Drainage Easements and/or this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Mortgage insured or guaranteed by HUD shall be subordinate to any Drainage Easement, easement, lease, license or right-of-way granted over, under or on the Lot encumbered by said Mortgage after said Mortgage was Recorded, without the consent of the then holder of said Mortgage.

8.15 Slope Maintenance. Each Tenant expressly acknowledges and agrees that certain Lots (the "Slope Lots") contain a slope that may be up to ten (10) feet in height ("Slopes"), which could pose a potential danger to Tenant and such Tenant's family, guests, invitees and their respective property. Accordingly, each Tenant of a Slope Lot hereby agrees to take all necessary precautions, including maintaining such Slopes in a good and safe condition on a continuous basis, to protect such Tenant and such Tenant's family, guests, invitees and their respective property from the dangers presented by the Slopes. Tenants of the Slope Lots shall not hold DHHL, Declarant, any Participating Builder or their respective employees, agents, attorneys or representatives, liable for, and hereby release DHHL, Declarant, all Participating Builders and their respective employees, agents, attorneys and representatives, from, and intentionally waive, any and all claims for damages or losses resulting from risks, nuisances, personal injuries, or other losses, damages or claims which result from, or relate to, the Slopes located within, or adjacent to, and on or around, the Slope Lots, and each Tenant of a Slope Lot shall indemnify, defend and hold harmless DHHL, Declarant, such Participating Builders and

their respective employees, agents, attorneys and representatives from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from the Slope on, or in proximity to, such Tenant's Lot.

8.16 Clustered Mailboxes. Clustered postal mailboxes ("Mailboxes") have been or will be constructed within portions of the Community affecting various Lots (collectively, the "Mailbox Lots"), and are significant features of the Community, serving the primary function of facilitating postal delivery within the Community. Some of the Mailboxes may be located within easement or license areas to be granted for access, maintenance and other purposes ("Mailbox Easements"), affecting the Mailbox Lots, which Mailbox Easements will be granted in favor of the United States Postal Service ("USPS") and/or the Association, to the extent that USPS and/or the Association are responsible for the repair and maintenance of said Mailboxes. Each Tenant understands and agrees that the Mailboxes shall be preserved and shall grant to the Association, Declarant, DHHL and USPS access to the Mailboxes.

The Mailboxes may present certain risks of danger to persons, especially children, and property. Accordingly, each Tenant hereby agrees to take all necessary precautions to protect himself or herself, and such Tenant's family, guests, invitees and their respective property from the dangers presented by the Mailboxes. By entering into a Lease, each Tenant shall be deemed to have assumed any and all risks, disturbances, liabilities, nuisances, hazards and damages associated with the Mailboxes and Mailbox Easements, and each Tenant agrees to maintain, preserve and not disturb, damage, alter or modify, and will take affirmative action to prevent any person or thing from destroying, damaging, disturbing, altering or modifying, such Mailboxes.

Each Tenant will indemnify, defend and hold harmless Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from acts and omissions of such Tenant and such Tenant's family, guests and invitees with respect to the Mailboxes and Mailbox Easements, and will release Declarant and DHHL and their respective employees, agents, attorneys, representatives, successors and assigns, from, and will intentionally waive, all claims for damages or losses resulting from the Mailboxes and Mailbox Easements. DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself and its successors and assigns to modify, relocate, realign said Mailboxes and/or Mailbox Easements, and to designate and grant said modified Mailbox Easements, to the extent determined by DHHL or its successors and assigns to be necessary or desirable to preserve or further the integrity and functions of the Mailboxes and/or Mailbox Easements, to USPS, the Association, any appropriate Public Agency and/or any public utility or other person or entity, and DHHL, as the fee simple owner of all Lots, has, and does hereby reserve, the right (but not the obligation), on behalf of itself, its successors and assigns to perform all acts, on behalf each Tenant, as well as for the benefit of DHHL and its successors and assigns and/or lien holders of the Community, which DHHL shall determine to be necessary or desirable to effect the same; provided that no portion of any Mailboxes or Mailbox Easements may be relocated or realigned more than five (5) feet from its location existing on the date that the Lease demising the affected Lot to such Tenant is Recorded, without the written consent of the Tenant of such Lot, which consent shall not be unreasonably withheld or delayed; provided further that if such Tenant fails to consent or reasonably withhold its consent within thirty (30) days after receipt of DHHL's request for said consent, such Tenant

shall be deemed to have given the requested consent. Each Tenant does consent to any and all such acts performed by Declarant, DHHL and their respective employees, agents, attorneys, representatives, successors or assigns as provided hereinabove and agrees to assume such obligations as may reasonably be imposed by the Mailbox Easement or any other instrument effecting any of the foregoing, and further agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same. Each Tenant does hereby appoint Declarant, DHHL and their respective successors and assigns, as such Tenant's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do all such things on such Tenant's behalf to effect the same, which grant of such power, being coupled with an interest, is irrevocable for the term of said Mailbox Easements and such other instruments, and shall not be affected by the disability of any party or parties. In addition, any Mortgagee or lien holder which obtains a Mortgage, security interest or other liens encumbering a Lot or any interest therein, by virtue of obtaining such Mortgage, security interest or lien, will agree that such Mortgage, security interest or lien shall be automatically subordinate to said Mailbox Easements and any and all easements, leases, licenses and/or right-of-way, over, under or on the Lots granted and/or received pursuant to the Mailbox Easements and/or this paragraph, without the need for any further action by any person, and without the execution and delivery of any further document to evidence such subordination; provided, however, that no Mortgage insured or guaranteed by HUD shall be subordinate to any Mailbox Easement, easement, lease, license or right-of-way granted over, under or on the Lot encumbered by said Mortgage after said Mortgage was Recorded, without the consent of the then holder of said Mortgage.

Article IX: Insurance and Casualty Losses

9.01 **Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. The Board shall also obtain a public liability policy covering the Common Areas, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and if reasonably available, directors' and officers' liability insurance, and fidelity bond coverage. All such insurance shall be in compliance with, and to the extent reasonably available, identical to the insurance requirements described in the Governing Documents, and shall name DHHL as an additional insured. Cost of insurance coverage obtained for the Common Areas shall be included in the Annual General Assessment, as defined in Article IV, Section 4.01. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties.

Article X: Amendment

10.01 **General Amendments.** Subject to the other limitations set forth in this Kānāwai, this Kānāwai may be amended by an instrument approved by not less than seventy-five percent (75%) of the vote of the Class A Members at a duly convened meeting, and the written approval of DHHL. The amendment instrument shall be recorded among the Official Records in which this Kānāwai is recorded. Unless a later date is specified in any such instrument, any amendment to this Kānāwai shall become effective on the date of recording; provided, however, that no

amendment shall be effective unless it is executed by DHHL and at least one Class A Member, should there be any Class A Members.

10.02 DHHL Amendments. Notwithstanding anything to the contrary herein contained, DHHL reserves the right to amend this Kānāwai during the Development Period without the consent of any party, including without limitation, the Association, Members, Tenants or Mortgagees, or any other Persons claiming an interest in the Property or the Association, and to amend this Kānāwai after the expiration of the Development Period without the consent of any party, if such amendment is necessary to: (a) bring this Kānāwai into compliance with the Act or any rule, regulation, or requirement of any of the Federal Agencies or the State or County; (b) make corrective changes; (c) reflect the relocation of boundary lines between the Common Area and any Lots or among any Lots, provided, however, that an approved resubdivision of the affected property shall not affect Lots which secure Mortgages insured, held or guaranteed by HUD without notice to, and consent of, the Mortgagee thereof; and/or (d) add all or any portion of the land described in Exhibit "B" hereto pursuant to Article VII.

Article XI: General Provisions

11.01 Duration. The covenants and restrictions of this Kānāwai shall run with and bind the land for a term of twenty (20) years from the date this Kānāwai is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated as provided in this Article.

11.02 Enforcement. DHHL, Declarant, the Association or any Tenant, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Kānāwai and the other Governing Documents. In addition, DHHL and the Association shall have the right to enforce this Kānāwai in accordance with the Kānāwai Enforcement Procedures, and each Tenant agrees to said Kānāwai Enforcement Procedures. Failure by DHHL, Declarant, the Association or any Tenant to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in other Sections of this Kānāwai.

11.03 Dust and Noise. Property within the Community and property adjacent to the Community will be developed and improvements will be constructed thereon by DHHL and other third-parties. The Association and each Tenant understands and accepts that such construction activities will result in the creation of dust, noise, vibrations, unsightliness, and other nuisances by DHHL or by such third-parties, and agrees that such construction activities, dust, noise, vibrations, unsightliness, and other nuisances shall not constitute a breach of any covenant or warranty by DHHL or serve as the basis for the filing of any suit against DHHL for abatement or injunction of such activities, dust, noise, vibrations, unsightliness, or nuisances or for damages or otherwise or for any complaint with any court or regulatory agency.

11.04 Cumulative Remedies. All rights, options and remedies of DHHL, Declarant, the Association, the Tenants or Mortgagees under the Governing Documents are cumulative, and

no one of them shall be exclusive of any other, and DHHL, Declarant, the Association, the Tenants and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in the Governing Documents.

11.05 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof, which provisions shall remain in full force and effect.

11.06 Construction. DHHL shall have the right to construe the provisions of this Kānāwai, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding on all persons and entities benefited or bound by the provisions of this Kānāwai.

11.07 Nuisance. The result of every act or omission where any provision, condition, restriction, covenant, easement, or reservation contained in this Kānāwai is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a private nuisance, shall be applicable against every such result, and may be exercised by DHHL, Declarant, the Association or any Tenant. Such remedy shall be deemed cumulative and not exclusive.

11.08 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Kānāwai, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as determined by the court as part of the judgment.

11.09 Notices. Any notice to be given to any party under the provisions of this Kānāwai shall be in writing and shall be deemed to have been properly delivered when directed to such addressee at the address furnished by such addressee for the purpose of notice and:

(a) At the time a written notice by mail is deposited in the United States mails, postage prepaid; or

(b) The time any other written notice, including facsimile, telegram, or other electronic mail message, is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or

(c) The time any oral notice is communicated, in person or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or wireless, to the recipient, including the recipient's designated voice mailbox or address on such a system, or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient. The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Tenant or Tenants, to any Mortgagee or Mortgagees, to any insurer or guarantor or to all Tenants or all Mortgagees, or all insurers or all guarantors to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

(d) **Governing Documents.** In the event of a conflict between any provisions of any of the Governing Documents with the provisions of another Governing Document, the Act or the Lease of each respective Lot, the order of superiority of such documents shall be (i) the Act, (ii) such Lease, (iii) Kānāwai, (iv) Supplementary Kānāwai, (v) Articles, (vi) Bylaws, (vii) Design Guidelines, and (viii) House Rules and the provisions of any such document shall be superseded by the provisions of the document shown above to be superior to such document to the extent of such conflict.

11.10 Effect of Kānāwai. This Kānāwai is made for the purposes set forth in the Recitals to this Kānāwai and DHHL makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of this Kānāwai, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

11.11 Personal Covenant. To the extent the acceptance or Lease of a Lot creates a personal covenant between the Tenant of such Lot and DHHL, or other Tenants, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be a Tenant, except to the extent this Kānāwai or such Lease may provide otherwise with respect to the payment of money.

11.12 Non-liability of Officials. To the fullest extent permitted by law, DHHL, Declarant, the Board, the Design Committee, and other committees of the Association or any member of such Board or committee shall not be liable to any Tenant or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such DHHL, Declarant, Board, committees or persons reasonably believed to be the scope of their duties.

11.13 No Liability of DHHL or Declarant to Construct Improvements Shown on Master Plan. Neither DHHL nor Declarant shall have express or implied duty or obligation to any Tenant or any other person to construct the improvements shown on the master plan approved by the County, as amended from time to time, and DHHL and Declarant shall have no liability hereunder to any Tenant or other person in the event that such improvements are not constructed.

11.14 Construction By DHHL. Nothing in this Kānāwai shall limit the right of DHHL to alter any Lots still owned by DHHL, or to construct such additional Structures as DHHL deems advisable. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Property such Structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by lease or otherwise. DHHL shall repair any damage to and complete any restoration of the Property caused or necessitated by such activities of DHHL within a reasonable time after the occurrence of such damage or need for restoration. This Kānāwai shall not limit the right of DHHL at any time to establish on the Property additional easements, leases, licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper Community. DHHL reserves the right to alter its construction plans and designs as each

deems appropriate. DHHL shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Tenants' rights to use and enjoy the Property.

11.15 **Headings.** The headings of the Articles and Sections of this Kānāwai are for convenience only and shall not affect the meaning or construction of the contents of this Kānāwai.

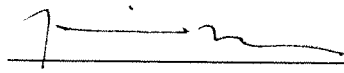
11.16 **Gender.** Throughout this Kānāwai, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

11.17 **Termination.** Termination of the Association shall be according to the provisions of the Articles of Incorporation.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned, being DHHL herein, has executed this instrument on the ____ day of _____, 2010.

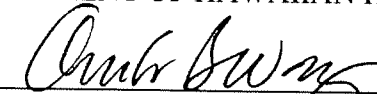
APPROVED:



Deputy Attorney General

State of Hawai'i

DEPARTMENT OF HAWAIIAN HOME LANDS

By 
Printed Name: Anita S. Wong
Its: / Deputy

"DHHL" and "Declarant"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 14th day of December, 2010, before me appeared Anita S. Wong, to me personally known, who being by me duly sworn or affirmed, did say that she is the Deputy of the DEPARTMENT OF HAWAIIAN HOME LANDS, and that said instrument was signed in behalf of said DEPARTMENT OF HAWAIIAN HOME LANDS by authority of the Hawaiian Homes Commission; and said Deputy acknowledged said instrument to be the free act and deed of said DEPARTMENT OF HAWAIIAN HOME LANDS.



Name: Ross S. Ikenaga

Notary Public, State of Hawai'i

My commission expires: 7/03/2013

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Kanawai for Kumuhan Subdivision and Kaka'ina Subdivision

☒ Document Date: Dec. 14, 2010 or ☐ Undated at time of notarization.

No. of Pages: 45 Jurisdiction: First Circuit
(in which notarial act is performed)

Ross S. Ikenaga
Signature of Notary

12-14-10
Date of Notarization and
Certification Statement

Ross S. Ikenaga
Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT "A"

All of those certain parcels of land situate at Waimanalo, Koolaupoko, City and County of Honolulu, State of Hawai'i, described as follows:

- I. Lots 1 to 54, inclusive, as shown on File Plan 2475, filed at the Bureau of Conveyances of the State of Hawaii.
- II. Easements 15 and 17, as shown on said File Plan 2457, for temporary roadway turnaround purposes.

EXHIBIT "B"

Additional Land Description

- I. **Lot 55**, as shown on File Plan 2475, filed at the Bureau of Conveyances of the State of Hawaii.
- II. **Lot 165**, as shown on Map 4 of Land Court Application No. 1569, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i.
- III. The portion of Government (Crown) Land of Waimanalo situate in Waimanalo, Koolaupoko, Oahu, Hawaii described on the following pages 2 through 5 of this Exhibit "B":

(The remainder of this page is intentionally left blank)



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 24,377

December 21, 2006

PORTION OF
GOVERNMENT (CROWN) LAND OF WAIMANALO

Waimanalo, Koolaupoko, Oahu, Hawaii

Beginning at the northeast corner of this parcel of land and on a jog on the west side of Hihimanu Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 2959.18 feet South and 3657.38 feet East, thence running by azimuths measured clockwise from True South:-

1. 345° 20' 305.00 feet along the west side of Hihimanu Street;
2. Thence along the northwest side of the intersection of Hihimanu Street and Kakaina Street on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being:
26° 35' 32.97 feet;
3. 67° 50' 1361.77 feet along the north side of Kakaina Street;
4. 143° 00' 100.00 feet along Grant 13,420 to Harry Young Chul Nam and Lee Ohk He Nam;
5. 170° 21' 56.52 feet along Grant 13,420 to Harry Young Chul Nam and Lee Ohk He Nam;

EXHIBIT "B"

December 21, 2006

- | | |
|------------------|---|
| 6. 150° 00' | 95.00 feet along Grant 13,420 to Harry Young Chul Nam and Lee Ohk He Nam; |
| 7. 310° 00' | 202.90 feet along Lots 89 and 91 as shown on Map 2 of Land Court Application 1569 and the southwest end of Mekia Street; |
| 8. 207° 30' | 238.90 feet along the southeast side of Mekia Street; |
| 9. 313° 45' | 132.00 feet along Lot 92 as shown on Map 2 of Land Court Application 1569; |
| 10. 224° 38' 30" | 108.96 feet along Lot 92 as shown on Map 2 of Land Court Application 1569; |
| 11. 144° 00' | 151.10 feet along Lots 92 and 94 as shown on Map 2 of Land Court Application 1569; |
| 12. 233° 00' | 191.40 feet along Lots 95, 96 and 97 as shown on Map 2 of Land Court Application 1569; |
| 13. 248° 30' | 250.80 feet along Lots 97 and 99 as shown on Map 2 of Land Court Application 1569 and the southeast side of Poalima Street; |
| 14. 325° 30' | 132.00 feet along Lots 100 and 101 as shown on Map 2 of Land Court Application 1569; |
| 15. 237° 15' | 366.30 feet along Lots 101 to 106, inclusive, as shown on Map 2 of Land Court Application 1569; |
| 16. 210° 15' | 99.70 feet along Lots 107 and 108 as shown on Map 2 of Land Court Application 1569; |
| 17. 205° 30' | 89.78 feet along Lots 108, 109 and 110 as shown on Map 2 of Land Court Application 1569; |
| 18. 236° 20' | 24.54 feet along Lot 110 as shown on Map 2 of Land Court Application 1569; |

EXHIBIT "B"

December 21, 2006

19. 297° 48'

100.18 feet along Lot 112 as shown on Map 2 of Land Court Application 1569 to the point of beginning and containing an AREA OF 8.344 ACRES.

SUBJECT, HOWEVER, to a Perpetual Non-Exclusive Waterline Easement covered by Grant of Easement to the City and County of Honolulu for the Board of Water Supply dated December 14, 2000 and recorded as Document Number 2000-175990 (Land Office Deed S-28427) and easement more particularly described as follows:

Beginning at the south corner of this easement and on the northwest side of Kakaina Street, the true azimuth and distance to the end of Course 3 of the above-described parcel of land being: 67° 50' 40.00 feet, thence running by azimuths measured clockwise from True South:-

- | | |
|-------------|---|
| 1. 157° 50' | 67.63 feet; |
| 2. 207° 26' | 25.23 feet; |
| 3. 310° 00' | 15.37 feet along the southwest end of Mekia Street; |
| 4. 27° 26' | 14.96 feet; |
| 5. 337° 50' | 60.69 feet; |

EXHIBIT "B"

C.S.F. No. 24,377

December 21, 2006

6. 67° 50'

15.00 feet along the northwest side of Kakaina Street
to the point of beginning and containing
an AREA OF 1264 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Gerald Z. Yonashiro
Gerald Z. Yonashiro
Land Surveyor ml

Compiled from map and desc.
furn. by Ace Land Surveying. Said map
and desc. have been examined and
checked as to form and mathematical
correctness but not on the ground by
the Survey Division.

EXHIBIT "B"

(Page 5 of 5)