

*Tea Room
Kawela*

5-1-81
GADSDEN SCHULTZ FLETCHING & HARRIS
P. O. Box 939
Honolulu, Hawaii 96808
SR# 1365

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STATE OF HAWAII
LAND COURT
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NOTED ON CERTIFICATE *15/8/81*
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RECORDATION REQUESTED BY:

AFTER RECORDATION: Addressee

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When Completed: Mail ()
Pick Up () Phone: 521-9200

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made and entered into this 30th day of April, 1981, by KAWELA PLANTATION DEVELOPMENT ASSOCIATES, a Hawaii limited partnership, with principal place of business and post office address at 195 South King Street, Honolulu, Hawaii 96813 (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the fee owner of land situated at Makakupaia and Kawela, Island of Molokai, County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof (such land being hereinafter referred to as "Kawela Plantation"); and

WHEREAS, Declarant intends to cause Kawela Plantation to be developed as a planned agricultural residential subdivision with open areas and other facilities for the benefit of the subdivision lot owners; and

WHEREAS, Declarant, by making this Declaration, intends to create and keep Kawela Plantation and its community areas desirable, attractive, beneficial and suitable in functional use and architectural design and appearance, and to guard against unnecessary interference with the natural beauty of Kawela Plantation; and

NOW, THEREFORE, Declarant, for the mutual benefit and protection of all Owners (as hereinafter defined) within Kawela Plantation, hereby declares that all of the land comprising Kawela Plantation, together with such other land as may hereafter be annexed thereto as provided herein, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the limitations, restrictions, covenants and conditions set forth in this Declaration (this Declaration and all supplemental declarations being sometimes hereinafter referred to as the "Kawela Plantation Protective Covenants"), all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of Kawela Plantation. These limitations, restrictions, covenants and conditions shall run with the land and shall be binding upon

all persons having or who acquire any right, title or interest in and to Kawela Plantation, and shall inure to the benefit of Declarant, the Association (as hereinafter defined) and each Owner, and their respective successors, heirs, personal representatives and assigns.

ARTICLE I

Definitions

Section 1.01. The following words when used in this Declaration or any supplemental declaration (unless the context requires otherwise) shall have the following meanings:

"Annexation" shall mean the process by which Declarant may annex to Kawela Plantation all, or any part, of land owned by Declarant on the Island of Molokai, County of Maui, State of Hawaii, at the time of such annexation.

"Architect" shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

"Association" shall mean the Kawela Plantation Homeowners' Association, a nonprofit corporation described in Article V of this Declaration, and its successors and assigns.

"Association Rules" shall mean the rules, regulations and policies adopted by the Board of Directors and as the same may from time to time be amended.

"Board" shall mean the Board of Directors of the Association.

"Bylaws" shall mean the Bylaws of the Association, which have been adopted and as the same may from time to time be amended.

"Charter" shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 416, Hawaii Revised Statutes, as amended.

"Common Property" shall mean all real property, including both land and improvements, in which the Association owns an interest for the common use and enjoyment of all Owners. Such interest may include, without limitation, estates in fee, estates for a term of years or easements and shall also include any personal property acquired by the Association if said personal property is designated as "Common Property".

"Declaration" shall mean and refer to the covenants, conditions and restrictions set forth herein, as the same may hereafter be amended.

"Design Committee" shall mean the committee created pursuant to Article IV of this Declaration.

"Design Committee Rules" shall mean those rules adopted by the Design Committee pursuant to Section 4.04 of this Declaration, which term shall be interchangeable with "Committee Rules".

"File or Filed" shall mean any document filed or to be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii, which terms shall be interchangeable with the terms "record or recorded."

"Historic Site" shall mean any area within the Common Property either (a) designated as an historic site on the subdivision map for Kawela Plantation filed in the Office of the Assistant Registrar or in the Bureau of Conveyances or (b) otherwise designated as an historic site by the Department of Land and Natural Resources of the State of Hawaii or the Bishop Museum (with the consent of the Association) based on the historical, archeological or religious significance of such property.

"Improvements" shall include buildings, outbuildings, roads, driveways, reservoirs, pipelines, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind.

"Kawela Plantation Protective Covenants" shall mean with respect to all property within Kawela Plantation, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and with respect to any property within Kawela Plantation which is annexed pursuant to Article II of this Declaration, as such Declaration may from time to time be supplemented or modified by the provisions of a supplemental declaration, if any, filed with respect to such property, pursuant to Section 2.02 of this Declaration.

"Lot" shall mean and refer to each agricultural residential lot created by legal subdivision and designated on a duly filed subdivision map approved by the appropriate agencies of the County of Maui (but excluding any Roadway Lots, Reservoir Lots, Preservation Lots and Common Property), and in each case, except when clearly contrary to the context, shall include all improvements thereon. Upon the consolidation of two or more lots the term "Lot" shall mean the land consisting of the Lots so consolidated.

"Majority of Owners" means the Owners holding more than 50% of the voting interest in the Association.

"Master Plan" shall mean and refer to the Master Plan for Kawela Plantation adopted by Declarant.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including a purchaser or purchasers under an agreement of sale, but excluding mortgagees in such

capacity; provided, that to such extent and for such purposes, including voting, as shall be provided by a lease of any Lot filed with the Office of the Assistant Registrar of the Land Court and with the Association, the lessee of such Lot shall be deemed to be the Owner thereof. Prior to the first conveyance of any Lot by Declarant, "Owner" shall mean Declarant unless Declarant has designated someone else to exercise the rights and bear the burdens of ownership.

"Sign" shall mean any structure, billboard, marquee, awning, canopy, street clock, announcement, declaration, demonstration, display, flag, pennant, banner, balloon, illustration or insignia used to identify, advertise, attract or promote the interests of any person when the same is placed on any real property or improvement and can be viewed from out of doors by the general public.

"Structure" shall mean anything constructed or erected which requires location on the ground or which is attached to anything having location on the ground, excluding utility poles and towers constructed by a public utility.

ARTICLE II

Land Subject to this Declaration; Annexation

Section 2.01. Initial Development. The initial development shall be all of the property described in Exhibit "A" attached hereto and made a part hereof, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Kawela Plantation Protective Covenants. Such property, together with such other real property from time to time annexed thereto and made subject to the Kawela Plantation Protective Covenants pursuant to Section 2.02 of this Declaration, shall constitute "Kawela Plantation."

Section 2.02. Annexation. Declarant may, pursuant to the following provisions of this Section 2.02, from time to time and in its sole discretion, annex to Kawela Plantation all or any part of the real property (not then constituting a part of Kawela Plantation) owned by it at the time of such annexation and situated on the Island of Molokai, County of Maui, State of Hawaii.

(a) The annexation of such property shall become effective when, and only when, Declarant or the Association shall have recorded a supplemental declaration, which may consist of more than one document, and which shall, among other things (i) describe the real property to be so annexed and such other limitations, restrictions, covenants and conditions applicable to such property as provided in paragraph (c) of this Section 2.02, and (ii) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Kawela Plantation Protective Covenants.

(b) Upon the annexation becoming effective, the property covered by such annexation shall become and constitute a part of Kawela Plantation.

(c) Any provision herein to the contrary notwithstanding, the supplemental declaration referred to in paragraph (a) of this Section 2.02 may, with respect to all or any part of the property described in such declaration, provide such limitations, restrictions, covenants and conditions with respect to the use of the property annexed as Declarant may deem to be appropriate for the development of such property.

Section 2.03. Representations. No property, except that described in said Exhibit "A" and hereby made subject to the Kawela Plantation Protective Covenants and except that specifically annexed pursuant to Section 2.02, shall be deemed subject to the Kawela Plantation Protective Covenants, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. No designation of any parcel, lot or other area on any map filed by Declarant as common property, road, street, park, open area or as any other type of parcel, lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in Exhibit "A" or specifically later annexed as aforesaid, and so designated on a subdivision map for such use, nor shall any Owner, or the public, or any public body or agency or any other person acquire any interest or rights in any property owned by Declarant by reason of such designation or filing, except as aforesaid. Nothing herein or in any supplemental declaration hereto shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject to the Kawela Plantation Protective Covenants any land it may now own or hereafter acquire other than that described in Exhibit "A" or such supplemental declaration.

ARTICLE III

Land Classifications and Use Restrictions

Section 3.01. Land Use. The following provisions shall apply to the use of all property subject to the Kawela Plantation Protective Covenants:

(a) General Restrictions. (Applicable to all of Kawela Plantation unless otherwise provided.)

- (1) All Lots shall be used in accordance with Section 205-4.5, Hawaii Revised Statutes, as amended, only for agricultural, residential and recreational purposes and shall contain only one

single family dwelling and appurtenant out buildings, including without limitation, barns, stables, garages, lath houses, glass houses, poultry and rabbit houses, kennels, and caretakers' and servants' quarters, subject, however, to the restrictions contained in this Declaration, the Association Rules and the Design Committee Rules. All permitted farming and other agricultural operations on the Lots or the Common Property shall be conducted in accordance with the standards of good husbandry and approved practices for such operations then prevailing in Hawaii.

- (2) No Lot shall at any time be used for or in connection with any apartment, hotel, condominium, or industrial purpose whatsoever, nor for any child day care center, hospital, sanitarium, nursing institution, convalescent home, boarding house, asylum, undertaking establishment, crematory, cattle feed pen, slaughter house, apiary, nor for the breeding, raising, or keeping of swine.
- (3) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners of all Lots in the enjoyment of their Lots. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements located thereon, shall be placed or used upon any Lot without prior written approval of the Design Committee.
- (4) No signs whatsoever shall be erected or maintained upon any Lot, except:
 - (i) Such signs as may be required by legal proceedings, or
 - (ii) Such signs as Declarant may erect or maintain on a Lot prior to sale and conveyance, or

- (iii) Residential identification signs of a combined total face area of one square foot or less for each residence, or
 - (iv) Any sign which does not comply with the above, but has been allowed by written permission of the Design Committee, provided such sign strictly complies in all respects with such permit.
- (5) No mobile home, travel trailer, truck camper, house trailer or similar facility, or any boat, shall be placed upon any Lot except for storage purposes in strict accordance with Association Rules in effect from time to time. No stripped down, wrecked or junk motor vehicle or parts shall be kept, parked, stored or maintained on any Lot.
 - (6) All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring Lots and roads, except during actual times of collection. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with Association Rules.
 - (7) No drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Lot.
 - (8) No improvement which has been partially or totally destroyed shall be allowed to remain on any Lot in such state for more than six (6) months from the date of such destruction.
 - (9) There shall be no hunting or discharge of firearms on any Lot.

- (10) All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a sewage system approved by the County of Maui in connection with its final subdivision approval for Kawela Plantation, any other appropriate governmental authority and the Design Committee.
- (11) All structures constructed on any Lot shall be constructed with a substantial quantity of new materials and no used structure shall be relocated or placed on any Lot.
- (12) No fence or wall shall be constructed on any Lot unless and until a permit for same has been issued by the Design Committee, and then only in strict accordance with the terms of such permit. Any fence or wall shall be maintained by the Owner of the Lot on which such fence or wall is located.
- (13) No Lot shall be resubdivided.
- (14) There shall be no blasting or discharge of explosives upon any Lot, except as may be required for construction and until a permit for same has been issued by the Design Committee.
- (15) No structure or improvement having a height of more than two stories shall be constructed on any Lot; provided, however, that the height of a structure or improvement may exceed two stories if permissible by law and if the Design Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

Section 3.02. Construction and Alteration of Improvements; Change in Topography; Approval of Plans; Design Committee.

The right of an Owner of a Lot to construct, reconstruct, refinish or alter any improvement on his Lot, or to install any utility line (wire or conduit) thereon, or grade, grub, fill, excavate or do any act which would affect the drainage thereof, shall be subject to all of the following:

- (a) Any act mentioned in the previous paragraph is absolutely prohibited unless and until the Owner of such Lot

first obtains the approval thereof from the Design Committee, and otherwise complies with the following provisions of this Section 3.02. The Association shall have the right to remove any improvement constructed, reconstructed, refinished, altered or maintained in violation hereof and the Owner shall reimburse the Association for all expenses incurred in connection therewith, including all attorneys' fees.

(b) Any Owner proposing to do any of the acts mentioned above, shall apply to the Design Committee for approval as follows:

- (1) The Owner shall submit to the Design Committee for approval such plans and specifications for the proposed work as the Design Committee shall request, including, but not limited to, the following:
 - (i) A plot plan of the Lot showing (a) building space, (b) contour lines, (c) the location of all existing and/or proposed improvements, (d) the proposed drainage plan, (e) the location of all trees and vegetation which the Owner proposes to remove, (f) the location of all proposed utility installations, and (g) the design and location of the sewage facilities to serve said Lot;
 - (ii) Floor plans;
 - (iii) Drawings showing all elevations of structures;
 - (iv) Description of exterior material and color, with samples;
 - (v) Description of provisions for replanting trees and vegetation, for stabilizing slopes during and after construction, and for controlling dust during construction;
 - (vi) The Owner's proposed construction schedule.

The Design Committee may require that any such submission shall be accompanied by a reasonable inspection fee in an amount not to exceed \$100.00.

- (2) If at any time the Design Committee shall determine that it would be in the best interests of Kawela Plantation for such Owner to employ an architect to design any improvement involved in the proposed work, the Design Committee shall inform such Owner in writing of its determination, whereupon all plans and specifications designated by the Design Committee to be so prepared must be prepared by such an architect.
- (3) The Design Committee shall approve the plans, drawings and specifications of any structure submitted to it only if the following conditions have been satisfied:
 - (i) The Design Committee finds that the plans and specifications of the proposed structure conform to these Kawela Plantation Protective Covenants;
 - (ii) The Design Committee finds that the proposed structure is aesthetically compatible with the physical site, the adjoining properties, the environment and the long range development plans of and for Kawela Plantation; and
 - (iii) The Design Committee finds that all setback requirements, Design Committee and Association Rules and government requirements have been complied with.

(c) Upon receipt of the approval from the Design Committee, the Owner shall, as soon as practical, proceed with the commencement and completion of the work contemplated by the application, pursuant to the approved plans and specifications. If the Owner shall fail to complete the foundation of any structure within six (6) months from the date of approval, the approval shall be deemed revoked unless upon the written request of the Owner made to the Design Committee prior to the expiration of said six (6) month period, the Design Committee finds in writing that there has been no change in circumstances and extends the time for such completion. In any event, the Owner shall complete the construction of the structure and all landscaping within one (1) year after commencing construction thereof, or such longer period as the Design Committee may approve in writing.

(d) Upon the completion of any work for which approval of the Design Committee is required under this Section 3.02, the Owner shall give notice thereof to the Design Committee, and within sixty (60) days thereafter the Design Committee, or its duly authorized representative, may inspect such work to determine whether it was done in substantial compliance with the approved application. If the Design Committee finds that such work was not done in substantial compliance with an approved application, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period and shall require the Owner to remedy such noncompliance. If upon the expiration of sixty (60) days from the date of the mailing of such notification the Owner shall have failed to remedy such noncompliance, the Design Committee shall notify the Association of such failure, and the Association, at its option, shall have the right to remedy the noncompliance or remove the nonconforming improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith, including all attorneys' fees. If the Design Committee shall fail to notify the Owner of any noncompliance within sixty (60) days after receipt of said notice of completion thereof from the Owner, the work shall be deemed to be in accordance with said approved application.

Section 3.03. General Restrictions Applicable to Common Property. Without limiting any of the provisions set forth in Section 2.02(c) of this Declaration:

(a) The use of Common Property shall at all times be subject to the rules, regulations and user charges, if any, prescribed by the Association from time to time, herein called the "Association Rules";

(b) After the conveyance of a Common Property by Declarant, no improvement, excavation or work which in any way alters such Common Property from its state on the date such Common Property is so conveyed, shall be made or done except upon strict compliance with the following provisions of this Section 3.03:

- (1) With the exception of the Association, or a public utility or governmental agency (by right of easement), no person shall have the right to construct any improvement upon, or shall make or create any excavation or fill upon, or shall change the drainage of, or shall destroy or remove any tree, shrub, or other vegetation on or from any Common Property.
- (2) Neither the Association nor any person or entity shall, without the prior approval of the Design Committee, (i) construct or reconstruct or refinish or alter the exteriors of, any improvement located or to be located

upon the Common Property, or (ii) make or create any excavation or fill, or change the natural or existing drainage of surface waters, or remove any trees, shrubs, or ground cover upon a Common Property. The Association, or any person or entity proposing to do such work, shall submit to the Design Committee for approval two sets of final plans and specifications for any such work in such form and containing such information as the Design Committee may require. The Design Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if it finds that all of the following conditions have been satisfied:

- (i) The construction of any new improvement, including any alteration of the exterior appearance of any existing improvement, complies with the Kawela Plantation Protective Covenants; and
- (ii) Such improvement (a) is reasonably necessary for any utility installation serving any property within Kawela Plantation or any property to be annexed to Kawela Plantation, or any property for which an easement has been reserved or granted by Declarant, or (b) is desirable in order to provide or improve access to or to enhance the use and enjoyment of any such property, or (c) is desirable to protect, enhance or preserve any property within Kawela Plantation.

Upon obtaining such Design Committee approval, the Association, or any person or entity proposing to do such work, shall, prior to commencing such work, procure all governmental permits, licenses, certificates and other approvals which are necessary to comply with all building, ecological, environmental, land use classification, zoning and other governmental requirements relating to such work.

Section 3.04. Application of Land Use Restrictions to Declarant. The provisions of Sections 3.01 and 3.02 of this Article shall not apply to any improvement, landscaping, excavation, fill or other act constructed or conducted on any Lot or property by Declarant.

ARTICLE IV

Kawela Plantation Design Committee

Section 4.01. Organization; Members. There shall be a Design Committee consisting of at least one member, but not more than five members. In addition, one or more alternates may be appointed, from time to time, for members of the Design Committee. Such alternates shall have the power as voting members of the Design Committee in the event the members for whom they are alternates are unavailable to act as members of the Design Committee. Each of said persons shall hold his office until such time as he has resigned, has been removed, or his successor has been appointed.

(a) Except as provided for in paragraph (b) following, the right to appoint and remove all members of the Design Committee is absolutely and unconditionally reserved to and vested solely in Declarant.

(b) The right to appoint and remove members of the Design Committee shall be vested in the Board of Directors of the Association from and after the date Declarant ceases to own any property subject to these Kawela Plantation Protective Covenants. Upon the right to appoint and remove members of the Design Committee being vested in the Board of Directors of the Association, the appointment and removal of members of the Design Committee shall be made by the Board of Directors in accordance with By-Laws of the Association.

Section 4.02. Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to the Kawela Plantation Protective Covenants, to adopt Design Committee Rules and to perform such other duties from time to time delegated to it by the Kawela Plantation Protective Covenants and by the Association. The Design Committee shall at all times act to implement the Master Plan, and, notwithstanding anything to the contrary contained in this Declaration, the Design Committee shall not take any action which shall materially alter, impede or otherwise interfere with the implementation of the Master Plan.

Section 4.03. Design Committee: Meetings; Action; Compensation; Expenses. The Design Committee shall meet from time to time as necessary to perform its duties. The vote or written consent of the majority of its members shall constitute an act by the Design Committee. Without limiting the generality of the foregoing, the vote or written consent of the

majority of the members of the Design Committee shall be required for any approval granted to pursuant to Sections 3.02(b) and 3.03(b) of this Declaration. The Design Committee shall keep and maintain a record of all action taken by it at such meetings or otherwise. Unless authorized by the Association, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function. In any event, the members of the Design Committee shall not be entitled to compensation or reimbursement from the Association so long as said members are appointed by Declarant under Section 4.01 of this Article.

Section 4.04. Committee Rules. The Design Committee shall by majority vote have the exclusive power to adopt, amend and repeal, rules and regulations, to be known as "Committee Rules", which interpret or implement the provisions of these Kawela Plantation Protective Covenants insofar as they relate to matters within the jurisdiction of the Design Committee. A copy of the Design Committee Rules, as they may from time to time be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner. The Design Committee Rules may from time to time establish setback requirements, height limitations, and restrictions on the minimum size and quality of structures permitted to be erected on Lots in Kawela Plantation and such requirements and restrictions need not be uniform. No such requirement or restriction shall apply to any structure constructed in accordance with plans and specifications previously approved by the Design Committee.

Section 4.05. Non-Waiver. The approval by the Design Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Design Committee under these Kawela Plantation Protective Covenants shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

Section 4.06. Variances. The Design Committee shall have the power to allow reasonable variances to the provisions of Article III in order to overcome practical difficulties and prevent unnecessary hardships, provided the following conditions are met:

(a) Upon the posting in the offices of the Association of not less than ten (10) days' prior notice, a public hearing on the application for such variance is held by the Design Committee; and

(b) The Design Committee finds that the variance will not be materially detrimental to other Lots in Kawela Plantation.

Section 4.07. Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to

the Association of a reasonable fee from time to time to be fixed by the Association, the Design Committee shall record an estoppel certificate certifying with respect to any Lot of said Owner, that as of the date thereof either (a) all improvements and other work made or done upon or within said Lot by the Owner, or otherwise, comply with the Kawela Plantation Protective Covenants, or (b) such improvements and/or work do not so comply, in which event the certificate shall also (1) identify the noncomplying improvements and/or work, and (2) set forth the cause or causes for such noncompliance. Any purchaser from the Owner or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and any purchaser, mortgagee or other encumbrancer.

Section 4.08. Liability. Neither the Design Committee nor any member thereof shall be liable to the Association, or to any other Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work of any kind by any Owner, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any property within Kawela Plantation, or (d) the execution and filing of an estoppel certificate; provided, however, that in each such event such member has acted in good faith.

ARTICLE V

Kawela Plantation Homeowners' Association

Section 5.01. Organization. The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and in its Charter and By-Laws. In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Charter.

Section 5.02. Membership.

(a) Each person, corporation or other legal entity who is an Owner (as defined in Section 1.01 of this Declaration) of any Lot within Kawela Plantation shall be a member of the Association. No person other than an Owner may be a member of the Association.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of the Kawela Plantation Protective Covenants, the Charter and the By-Laws of the Association.

Section 5.03. Voting Rights. An Owner shall have one (1) vote for each Lot owned by such Owner. If more than one person or entity owns a Lot, any one of said persons or

entities may exercise the vote allocated to the Lot on behalf of all the Owners of the Lot unless the Association is notified in writing that the Owners of the Lot disagree as to how the vote should be cast, in which event the vote for the Lot shall not be counted unless the Owners unanimously agree. If two or more Lots are consolidated, the voting interest of the consolidated lot shall equal the total voting interest of the individual Lots prior to their consolidation. All voting shall be conducted at the time, place and in the manner prescribed in the By-Laws.

Section 5.04. Duties and Obligations of the Association. The Association shall have the rights, obligations and duties, subject to the Kawela Plantation Protective Covenants, to do and to perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Kawela Plantation:

(a) The Association shall accept all Owners as members of the Association.

(b) The Association shall accept title to or any other interest in any and all Common Property from time to time conveyed to it by Declarant. The Association may also acquire and accept title to any other property, real, personal or mixed; however, nothing herein shall be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guests of the recreational facilities on the Common Property to help defray the costs of operating and maintaining the Common Property.

(c) The Association shall maintain or provide for the maintenance of the Common Property, including, without limitation, recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on the Common Property, in good order and repair.

(d) The Association shall operate and maintain the drinking water system for Kawela Plantation, whether or not located on the Common Property, so that the product/finished water will comply with the requirements of (i) chapter 340E, Hawaii Revised Statutes (the "State Safe Drinking Water Act"), (ii) Chapter 49, State of Hawaii Department of Health Public Health Rules and Regulations ("Potable Water Systems"), and (iii) the Rules and Regulations of the County of Maui Department of Water Supply.

(e) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Property.

(f) Unless provided by a municipal, county or other governmental agency to all of the residents of Kawela Plantation, the Association may contract for, employ or otherwise provide security, refuse disposal and other services and maintain the Common Property.

(g) Notwithstanding anything to the contrary contained in this Declaration, the Association shall, upon conveyance by Declarant, accept title to any reservoir lots designated on the subdivision file plan for Kawela Plantation, together with any and all improvements thereon, and upon such conveyance, shall use, keep, maintain and operate such lots and improvements as Common Property.

(h) The Association shall obtain and maintain in force the following policies of insurance:

- (1) Fire and extended coverage insurance on all improvements from time to time owned by the Association or located upon or within any Common Property, the amount of such insurance to be not less than ninety percent (90%) of the aggregate full insurable value, meaning the actual replacement value (exclusive of the cost of excavation, foundations and footings) of such improvement as from time to time determined by the Association;
- (2) Bodily injury liability insurance with limits of not less than \$500,000 per person and \$1,000,000 per occurrence, insuring against any and all liabilities and with respect to Kawela Plantation or any portion thereof, or arising out of the ownership, maintenance or use thereof; and
- (3) Property damage liability insurance with deductible of not more than \$2,000 and a limit of not less than \$500,000 per accident.

The policy or policies of insurance referred to in subparagraphs (2) and (3) above shall name as insureds (a) the Association and its officers, the Board and its members, the Design Committee and its members and the employees of the Association, Board and Design Committee and (b) with respect to any liability arising out of the maintenance and use of the Common Property, the Owners. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies, provided, however, that such policy or policies shall not require the insured or insurers to pay any amounts in excess of the maximum limits stated therein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of Kawela Plantation Protective Covenants,

shall expressly waive any and all rights of subrogation against the Declarant, its representatives and employees, and any Owner.

The Association may also obtain and maintain in force any policies of insurance covering any other reasonable risks as may be determined to be proper and necessary or advisable in the discretion of the Board.

(i) To the extent provided for in Section 4.01 of this Declaration, the Association shall exercise its rights to appoint and remove members of the Design Committee to insure that at all reasonable times there is available a duly constituted and appointed Design Committee.

(j) The Association shall have all the powers set forth in the Kawela Plantation Protective Covenants, including, without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by the Kawela Plantation Protective Covenants, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of these Kawela Plantation Protective Covenants, the Association Rules and the Design Committee Rules.

(k) The Association shall maintain the fences surrounding the Historic Sites and take such actions as it deems necessary to preserve the Historic Sites.

Section 5.05. Powers and Authority of Association.
The Association shall have all the powers set forth in the Charter, together with its general powers as a nonprofit corporation, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Kawela Plantation Protective Covenants, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners of Kawela Plantation. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing the same, if for any reason whatsoever the Owner or Owners thereof fail to maintain and repair such Lot as required under Article III of this Declaration or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair parks or other areas used by the public in or adjoining Kawela Plantation, including landscaping and repairing improvements thereon, when public authorities, in the

opinion of the Board, have failed to do so in a manner befitting the standards of Kawela Plantation. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Kawela Plantation Protective Covenants, or to enforce by mandatory injunction or otherwise all of the provisions of these Kawela Plantation Protective Covenants.

(b) In fulfilling any of its obligations or duties under the Kawela Plantation Protective Covenants, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of the Common Property and, to the extent necessary by the failure of the Owners thereof, of Lots, or in exercising any of its rights to construct improvements or other work upon any Common Property, including, without limitation, any recreational facility, the Association shall have the power and authority:

- (1) To contract and pay for or otherwise provide for the maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon Common Property, and, whether or not located on the Common Property, the drinking water system, and to contract and pay for or otherwise provide for the construction of improvements or other work upon Common Property, or otherwise in carrying out its functions as set forth in the Kawela Plantation Protective Covenants on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;
- (2) To obtain, maintain and pay for such insurance policies or bonds whether or not required by Section 5.04 of this Declaration as the Association may deem to be appropriate for the protection or benefit of Kawela Plantation, the Association, the members of the Board, the members of the Design Committee, or the Owners, including, but without limitation, war risk insurance, builders' risk, worker's compensation insurance, malicious mischief insurance, automobile, non-ownership insurance and performance and fidelity bonds;

- (3) To contract and pay for, or otherwise provide for such utility and other services including, but without limitation, water, sewer, garbage, electrical, cable television, telephone and gas services as may from time to time be required or desired, PROVIDED, HOWEVER, that the association shall not be responsible for constructing or installing a sewage disposal system for any lot;
- (4) To contract and pay for, or otherwise provide for the services of architects, engineers, attorneys and certified public accountants or such other professional or non-professional services as the Association may deem necessary;
- (5) To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of Kawela Plantation, any property located within Kawela Plantation, and the Owners;
- (6) To contract and pay for, or otherwise provide for such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any Common Property on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) The Association shall have the power and authority from time to time to grant and convey to any third parties for reasonable compensation and on such other terms as the Association may approve, such easements, rights-of-way, parcels or strips of land in, on, over or under any Common Property, for the purpose of:

- (1) Constructing, directing, operating and maintaining thereon, therein and thereunder, public roads, streets, walks, driveways, parkways and park areas;

- (2) Installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, power, telephone, television and other purposes, and necessary facilities in connection therewith; and
- (3) Constructing, operating and maintaining public and private sewers, storm water drains, land drains and water systems, sprinkler systems, water, and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a manager to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under the Kawela Plantation Protective Covenants, provided, however, that the Association shall not delegate to such manager the power to (i) execute any contract binding on the Association for a sum in excess of \$10,000 or for the performance of any work or services which are not to be completed within sixty (60) days, or (ii) sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.

(e) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Property, or upon any personal property belonging to the Association, provided, however, that prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.

(f) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve, any portion or portions of the Common Property, with improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the Owners, and to borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V and to secure the same by a mortgage of the Common Property then owned by the Association, or any part thereof, provided, however, that no such exchange, sale or other disposition of any real property in fee and no such borrowing and mortgaging shall be made unless the same shall have been approved by an affirmative vote of not less than two-thirds (2/3)

of the members of the Association at a meeting duly called, the notice for which shall have described the real property to be sold or otherwise disposed of, or the amount of the borrowing and the security to be mortgaged, and shall have given the reasons therefor. All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Owners, or in maintaining or improving the properties of the Association.

Section 5.06. Association Rules.

(a) The Association may from time to time, subject to the provisions of the Kawela Plantation Protective Covenants, and in the manner prescribed in the Bylaws, adopt, amend and repeal rules and regulations to be known as the Association Rules governing, among other things:

- (1) The use of Common Property, including, without limitation, the recreational facilities;
- (2) The use of roads;
- (3) The collection and disposal of refuse;
- (4) The burning of open fires; and
- (5) The maintenance of animals within Kawela Plantation.

(b) With respect to subparagraph (a)(1) above, the Association Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Kawela Plantation for all Owners, their families, invitees, licensees, lessees, and guests, restrict and govern the use of Common Property by any Owner or by the family, invitees, licensees, or lessees of such Owner. With respect to each Historic Site, the Association Rules shall, to the extent deemed necessary by the Association in order to preserve the Historic Site, restrict the entry onto and use of such Historic Site by all Owners, and by the family, invitees, licensees or lessees of all Owners.

(c) A copy of the Association Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or any assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and duplicate copies thereof shall be delivered to each Owner on his acquisition of a Lot, and a copy of each new rule or of any amendment of an existing rule and notice of appeal of any rule shall be delivered to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Association Rules shall have the same force and effect as if they were set forth and were a part of the Kawela Plantation Protective Covenants. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

Section 5.07. The Powers of the Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in Section 5.06 above.

ARTICLE VI

Funds and Assessments

Section 6.01. Operating and Capital Improvement Funds. There shall be an operating fund in which the Association shall deposit all monies paid to it as maintenance assessments, special assessments, use fees paid by users of recreational facilities, miscellaneous fees, and income and profits attributable to the operating fund and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.02. Maintenance and Special Assessments.

(a) At least thirty (30) days prior to the commencement of the Association's fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V of this Declaration and fix the amount of the maintenance assessment for such fiscal year. From said estimates, the Board shall subtract an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to maintenance assessments in the preceding fiscal year and the amount of income from any Common Property maintenance trust established by or for the Association; and the sum derived (hereinafter called the "total assessment basis") shall constitute the basis for determining maintenance assessments in each fiscal year. The Board shall cause its budget for the operating fund (and the total assessment basis) to be delivered to each Owner at least fourteen (14) days prior to the annual meeting. The budget for the operating fund (and the total assessment basis) shall become effective unless disapproved at the annual meeting by a majority of the Owners. Notwithstanding the foregoing, however, in the event the budget for the operating fund (and the total assessment basis) is disapproved by the Association at its annual meeting or the Board fails for any reason to determine the budget for the operating fund (and the total assessment basis) for the succeeding fiscal year, then and until such time as a budget for the operating fund (and the total assessment basis) has been determined as provided herein, the budget for the operating fund in effect for the then current fiscal year shall continue for the succeeding fiscal year.

(b) Each Owner's proportionate share of the maintenance and special assessments shall be based on the ratio of each Owner's Lot area to the area of all Lots (as defined in Section 1.01) in Kawela Plantation.

(c) If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(e) Maintenance assessments shall be due and payable by the Owners to the Association in equal quarterly installments on such dates prescribed by the Board.

Section 6.03. Special Damages Assessments. The Board shall levy a special damages assessment against any Owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Kawela Plantation Protective Covenants, the Association Rules or the Design Committee Rules, monies were expended from the operating fund by the Association in performing its functions under the Kawela Plantation Protective Covenants.

Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, engineers', architects', attorneys' and accountants' fees where reasonably incurred by the Association.

Section 6.04. Late Charge. If any assessment (including any special assessment) is not paid within thirty (30) days after it is due and payable, the delinquent Owner shall be liable for and shall pay a reasonable late charge of \$25 or 4% of the amount of such assessment, whichever is greater, to reimburse the Association for the cost of extra handling.

Section 6.05. Lien and Default. Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of an agreement of sale, deed, lease or other instrument of conveyance, whether or not it shall be so expressed in any such agreement of sale, deed, lease or other instrument, shall be deemed to covenant and agree to pay the same to the Association, provided that no mortgagee, or any officer, director or trustee thereof, shall be personally obligated to pay any assessment. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus the late charge and interest at ten percent (10%) per annum (commencing from the date of default) and costs, including reasonable attorneys' fees, shall be and become, notwithstanding any lease applicable to the property, a lien upon the fee simple interest in the property upon the filing by the Association of a notice of default in the Office of the Assistant Registrar of the Land Court and/or Bureau of Conveyances of the State of Hawaii, and in the event a lessee of any Lot is deemed to be the Owner of such Lot, the lien shall attach to both the fee simple and leasehold

estates. In case of a voluntary conveyance the grantee, vendee or lessee of any Lot shall be jointly and severally liable with the grantor, vendor or lessor for all unpaid assessments together with the late charge, interest, costs of collection and reasonable attorneys' fees which shall be a charge against the Lot at the time of the conveyance, without prejudice to the right of the person receiving the conveyance to recover from the person making the conveyance the amounts so expended by the person receiving the conveyance. An amount shall be deemed a "charge" against a Lot as soon as it accrues even though no lien may have been filed. Any party to a conveyance shall be entitled upon written request to a statement from the Association setting forth the amount of any unpaid assessment together with any interest, cost of collection and reasonable attorneys' fees which may be a charge against a Lot; and neither the person making or receiving the conveyance shall be liable for, nor shall the Lot conveyed be subject to, a lien for any amount in excess of the amounts set forth in such statement. If more than one person owns a Lot, all such co-owners shall be jointly and severally liable for all amounts which are a charge against or lien upon such Lot. Such lien shall be subject to and subordinate to the lien of any mortgage on the lot of such Owner described in Section 6.08 of this Declaration, and to the lien of any water assessments. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of assessments which become due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot, or the purchaser or transferee thereof with regard to assessments thereafter becoming due except as to any mortgage as provided above. Association liens may be foreclosed through suit in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

Section 6.06. Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the indebtedness secured by the lien upon the Lot of the Owner, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing the Certificate.

Section 6.07. Capital Reserve. Any portion of assessments to be used for improvements, major maintenance or other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners and shall be credited by the Association upon its books as reserves for improvements and maintenance.

Section 6.08. Mortgagee Protection. Notwithstanding all other provisions of Article VI hereof:

(a) The lien which may be created hereunder upon any Lot shall be subject and subordinate to the indebtedness secured by (i) any recorded first mortgage (meaning a mortgage with first priority over all other mortgages) upon such interest made in good faith and for value, or (ii) any recorded purchase money mortgage, or (iii) any recorded second mortgage executed in favor of a generally recognized lending institution; provided, however, that after the foreclosure of any such mortgage a lien may be created pursuant to Section 6.05 of this Article on the interest of the purchaser at such foreclosure sale to secure all assessments arising after the date of such foreclosure sale;

(b) No amendment to this Section shall affect the rights of the holder of any mortgage referred to in paragraph (a) above whose mortgage was recorded prior to recordation of such amendment and who does not join in the execution thereof;

(c) By subordination agreement authorized by the Board, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

ARTICLE VII

Water, Sewer, Roadway and Other Assessments

Section 7.01. Obligation for Assessments. Each Lot within Kawela Plantation shall be subject to water, roadway and other assessments to pay the costs of operating and maintaining the water, roadway and other systems, facilities, utilities and services (hereinafter collectively referred to as the "utility systems") serving such Lot. These assessments shall not be used to reimburse Declarant or otherwise pay the costs of constructing such utility systems, but they may include amounts to be set aside as reserves for major repair and replacements of such systems.

Section 7.02. Ownership of Utility Systems. Declarant reserves the right to establish whatever method of ownership of the utility systems as it deems most appropriate. Declarant may retain ownership of the systems, dedicate the ownership thereof or other interest therein to the County of Maui or any other governmental entity, convey the systems to the Association, establish a separate association of users of the systems, or establish any other appropriate form of ownership. The Association shall accept any such conveyance of any utility system to it by the Declarant, together with all obligations and responsibilities pertaining thereto or to the operation thereof, and shall thereafter keep, maintain and operate the same, provided, that Declarant shall indemnify the Association against any mechanics' and materialmen's liens arising out of the construction by it of any such utility system. After any such conveyance, the Declarant may from time

to time at its own expense construct extensions and enlargements of any of the utility systems serving Lots in Kawela Plantation, and may join and incorporate such extensions and enlargements with the original utility systems so conveyed to the Association, and the Association shall accept such extensions and enlargements and keep, maintain and operate them along with the initial utility systems so long as all users of these systems owned by the Association are members of the Association or otherwise pay their ratable share of all assessments pertaining to the use of such systems. The expense of keeping, maintaining and operating all such utility systems shall be borne by the Association after any such conveyance and an assessment shall be levied therefor in the same manner as provided for the maintenance assessment under Article VI of this Declaration, and all provisions in this Declaration for collection of maintenance assessments shall apply equally to assessments for keeping, maintaining and operating all such systems, including without limitation, the lien provisions.

ARTICLE VIII

Miscellaneous Provisions

Section 8.01. Amendment or Repeal - Duration.

(a) In addition to the rights reserved to the Declarant pursuant to Section 2.02 of this Declaration to modify or supplement the Kawela Plantation Protective Covenants with respect to property annexed to Kawela Plantation unless specifically provided to the contrary herein, the Kawela Plantation Protective Covenants, or any part thereof, as from time to time in effect with respect to all or any part of Kawela Plantation, and any limitation, restriction, covenant or condition thereof may, at any time, be amended or repealed upon the happening of all of the following events:

- (1) The affirmative vote of at least seventy-five percent (75%) of the Owners in Kawela Plantation, approving the proposed amendment or repeal of the Kawela Plantation Protective Covenants at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Kawela Plantation Protective Covenants, giving the substance of proposed amendments or indicating the provisions to be repealed, as the case may be;
- (2) The recordation of a certificate of the secretary or an assistant secretary of the Association setting forth in full the amendment or amendments to the Kawela Plantation Protective Covenants so approved, including any

portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph; and

- (3) The recordation of a written instrument also setting forth in full said amendment or amendments to the Kawela Plantation Protective Covenants, executed by any two (2) duly authorized officers of the Association.

(b) All of the limitations, restrictions, covenants and conditions of the Kawela Plantation Protective Covenants shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within Kawela Plantation, to the Owners and to the Association, subject, however, to the right to amend and repeal as provided in paragraph (a) of this Section 8.01, for a period of twenty-one (21) years following the death of the survivor of Jimmy E. Carter, President of the United States, and all his descendants living on the day and year first above written, but not beyond the year 2005 A.D., provided, however, that unless within one (1) year prior to the expiration of said twenty-one (21) year period or prior to December 31, 2004, whichever first occurs, there shall be recorded an instrument directing the termination of the Kawela Plantation Protective Covenants and containing a certificate signed by two (2) officers of the Association certifying that the Owners of not less than two-thirds (2/3) of the Lots within Kawela Plantation have voted to terminate the Kawela Plantation Protective Covenants, the Kawela Plantation Protective Covenants then in effect immediately prior to the expiration date shall, subject to the provisions of paragraph (a) of this Section 8.01, be continued automatically without further notice for an additional period of ten (10) years, and thereafter for successive periods of ten (10) years each unless, within one (1) year prior to the expiration of any such period, the Kawela Plantation Protective Covenants shall be terminated as set forth above in this paragraph (b).

Section 8.02. Release of Property. The Declarant in its sole discretion, or the Association by affirmative vote of two-thirds of the members of the Association, may from time to time release any of the property which is or may be subject to this Declaration, provided that no property shall be released without its Owner's written consent. The release of any such property shall be effective upon the Declarant or Association upon filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of an instrument describing the real property to be released and declaring such property to be free from the conditions, covenants and restrictions of this Declaration. No such release shall result in the cancellation of any assessments already due and payable by the Owner of such property, nor in the cancellation of any liens against the released property.

Section 8.03. Enforcement, Non-Waiver.

(a) Except to the extent otherwise expressly provided herein, Declarant, the Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Kawela Plantation Protective Covenants upon other Owners or upon any property within Kawela Plantation, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. Any person authorized by the Board shall have the right to enter and inspect any Lot for the purpose of ascertaining whether the limitations, restrictions, covenants, conditions and obligations imposed under this Declaration are being observed and performed by the Owner of such Lot, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be effective immediately, whether an advance request is made or not and whether the Owner is present at the time or not.

(b) Every act or omission whereby any restriction, condition or covenant of these Kawela Plantation Protective Covenants is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraph (a) of this Section 8.02, provided, however, that any provision to the contrary notwithstanding, only Declarant and the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own action without authority of a court having jurisdiction.

(c) Each remedy provided for in the Kawela Plantation Protective Covenants is cumulative and non-exclusive.

(d) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Kawela Plantation Protective Covenants shall not constitute a waiver of any right to enforce any such provisions or any other provisions of the Kawela Plantation Protective Covenants in another case against or with respect to the same Owner or Lot or any other Owner or Lot.

Section 8.04. Construction; Compliance with Laws; Severability; Singular and Plural; Titles.

(a) All of the limitations, restrictions, covenants and conditions of the Kawela Plantation Protective Covenants shall be liberally construed together to promote and effectuate the fundamental concepts of Kawela Plantation as set forth in the introductory paragraphs of this Declaration.

(b) No provision of the Kawela Plantation Protective Covenants shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Kawela Plantation or any part thereof. Anything in the Kawela Plantation Protective Covenants to the contrary notwithstanding, if all uses to which a Lot may be put under the provisions of the Kawela Plantation Protective Covenants are illegal under the applicable zoning ordinances or statutes, an Owner may use his Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Kawela Plantation Protective Covenants which can lawfully apply to the Lot as so used.

(c) Notwithstanding the provisions of paragraph (a) of this Section 8.04, the limitations, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision of this Declaration.

(d) The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include all genders unless the context requires the contrary.

(e) The headings of Articles and Sections herein are inserted solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Declaration.

Section 8.05. Dedication of Property. Notwithstanding any provision contained herein to the contrary, Declarant shall have the absolute and unconditional right to dedicate, convey or sell any Lot or property which it may now own or hereafter acquire to the State of Hawaii, the County of Maui or any government agency thereof, free and clear of any or all of the limitations, restrictions, covenants and conditions contained in this Declaration.

Section 8.06. Attorneys' Fees. In any action brought by the Association, the Board and/or the Design Committee to enforce the provisions hereof, whether legal or equitable, the Association, the Board and/or the Design Committee shall be entitled to a reasonable attorneys' fee as fixed by Court if it is the prevailing party to the action.

Section 8.07. Parties in Interest. As and when used herein, the term "Declarant" shall mean and include the Declarant above-named, and its successors and assigns; the term "Owner" shall mean and include each Owner as herein defined, and each Owner's heirs, personal representatives, successors and assigns.

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

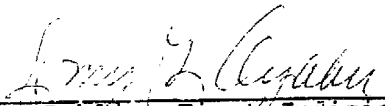
KAWELA PLANTATION DEVELOPMENT
ASSOCIATES

By Polynesian Shores, Inc.
Its General Partner

By 
Its President

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

On this 30th day of April, 1981, before me appeared WADSWORTH YEE to me personally known, who, being by me duly sworn, did say that he is President of Polynesian Shores, Inc., a Hawaii corporation, a general partner of Kawela Plantation Development Associates, a registered Hawaii limited partnership; that the seal affixed to the foregoing instrument is the corporate seal of such corporation, and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors; and said WADSWORTH YEE acknowledged such instrument to be the free act and deed of such corporation, on behalf of such partnership.



Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: 2-28-82

ALL of those certain parcels of land situate at Kawela and Makakupaiaki, Island of Molokai, County of Maui, State of Hawaii, described as follows:

LOTS 23 to 109, inclusive, as shown on Map 8, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1714 of Molokai Ranch, Limited;

BEING portions of the land described in and covered by Transfer Certificate of Title No. 222,529 issued to Kawela Plantation Development Associates.

TOGETHER WITH Easement 16 as shown on Map 7, filed in said Office of the Assistant Registrar with Land Court Application No. 1714, as described in and covered by Transfer Certificate of Title No. 123,180 issued to Molokai Ranch, Limited;

SUBJECT, HOWEVER, to Easements 18 to 84, inclusive, and 87 to 92, inclusive, as shown on Map 8 filed with said Land Court Application No. 1714.