

Waialae Iki V Community Association  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**Waialae Iki V Community Association**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION made by GENTRY VENTURES, a registered Hawaii limited partnership with its principal place of business and post office address at 94-539 Puahi Street, Waipahu, City and County of Honolulu, State of Hawaii (hereinafter referred to as "GENTRY VENTURES"), and THOMAS HENRY GENTRY, husband of Nora Silva Gentry, of Honolulu aforesaid (hereinafter referred to as "GENTRY"), hereinafter collectively referred to as the "DECLARANT";

**WITNESSETH THAT:**

WHEREAS, Gentry Ventures is the owner of certain real property situate at Waialae-Iki, City and County of Honolulu, State of Hawaii, described in Exhibit "A" attached hereto and by reference made a part hereof, which, together with the real property described in Exhibit "B" attached hereto and by reference made a part hereof is commonly referred to as "Waialae Iki V".

NOW, THEREFORE, Declarant hereby declares that all of the real property described in said Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Declaration (hereinafter referred to as the "Community Area Restrictions"), all of which are established and declared and agreed to be for the purpose of enhancing, protecting and preserving the value, desirability and attractiveness of the Community Area and to be for the direct, mutual and reciprocal benefit of each and every part of the Community Area. Said limitations, covenants, conditions and restrictions shall create mutual equitable servitudes upon each Lot or site in the Community Area in favor of every other lot or site in the Community Area and shall create reciprocal rights and obligations in, between and among all persons and/or entities having any right, title or interest in and to the Community Area or any part thereof. In addition, said limitations, covenants, conditions and restrictions shall operate as perpetual covenants running with the land, binding according to the terms hereof on all persons and/or entities having or acquiring any right, title or interest in the Community Area or any part thereof.

**ARTICLE I**  
**DEFINITIONS**

Unless the context of the particular provision otherwise specifies or requires, the terms defined in this Article I shall have for the purposes of these Community Area Restrictions the meanings hereinafter specified:

ARCHITECT shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes (1968), as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

ARCHITECTURAL ADVISORY BOARD shall mean the Board created pursuant to Article IV.

ASSOCIATION shall mean the Waialae Iki V Community Association, a non-profit corporation described in Article V and its successors.

ASSOCIATION RULES shall mean the rules which may be adopted, amended or repealed from time to time pursuant to Section 5.06.

BOARD shall mean the Board of Directors of the Association.

BY-LAWS shall mean the By-Laws of the Association which have been or shall be duly adopted by the Association.

CHARTER shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 416 of the Hawaii Revised Statutes (1968), as amended.

COMMON AREAS shall mean and be that real property within the Community Area, including all improvements thereon, which is dedicated to and owned by the Association for the mutual benefit, use and enjoyment of the owners of Lots in the Community Area.

COMMUNITY AREA shall mean all of the real property referred to in Section 2.01, together with such other real property from time to time added thereto pursuant to Section 2.02.

ENGINEER shall mean a person registered to perform engineering services in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes (1968), as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

EXCAVATION shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock to a depth of more than eighteen inches.

FAMILY shall mean the immediate family of an Owner or Owners (if ownership is by husband and wife) of a Lot and the parents and siblings (but not members of their separate families) of such Owner or of either one of such Owners (if ownership is by husband and wife).

FILE or FILED shall mean with respect to any subdivision map, the map which has been recorded in the Bureau of Conveyances of the State of Hawaii and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

FILL shall mean any addition of rock or earth materials to the surface of the land (except temporarily for planting) which increases the previous elevation of such surface by more than eighteen inches.

FISCAL YEAR shall mean the year from January 1st to and including December 31st.

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

LOT shall mean any lot in the Community Area created by legal subdivision and designated on a duly filed subdivision map.

MAINTENANCE ASSESSMENT shall mean any assessment levied pursuant to Section 6.02.

MANAGER shall mean the person or corporation appointed as such, pursuant to subsection 5.05(D).

OPERATING FUND shall mean the fund created pursuant to Section 6.01.

OWNER shall mean a person, corporation, partnership or other legal entity described as an owner in Section 5.02, but with respect to the covenants, conditions, limitations and restrictions contained in Articles III and IV, the term shall not be deemed to include the Declarant.

RECORD shall mean with respect to any document, to record such document in the Bureau of Conveyances of the State of Hawaii and/or to file such document in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or both.

RECREATIONAL FACILITY shall mean any improvement used for or in connection with any recreational purpose or activity, including but not limited to park and playground facilities, tennis, basketball and volleyball courts, community gathering halls and swimming and wading pools.

ROAD or STREET shall mean any public road or street or any private paved vehicular way constructed within or upon any portion of the common areas, an apron or other paved access from such vehicular way to Lots or sites within the Community Area.

SPECIAL ASSESSMENT shall mean any assessment levied pursuant to Section 6.03.

SUBDIVIDE shall mean the division of any lot into two or more lots or residential units.

SUBDIVISION MAP shall mean a map showing a legal subdivision which is recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

VIEW CHANNEL EASEMENT shall mean an easement in favor of the Association establishing an imaginary plane over a certain portion of a Lot above which and into the air space above which no structure or landscaping on the Lot may protrude.

VISIBLE FROM NEIGHBORING PROPERTY shall mean, with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above the ground level of any adjoining property, excluding contiguous property owned by the Owner of the property involved, but including common

areas and streets, assuming that the ground level of such adjoining property is equal to its actual elevation, or from the highest elevation of the ground of the property upon which such object or activity is located, whichever elevation is the lower.

**ARTICLE II**  
**PROPERTY SUBJECT TO COMMUNITY AREA RESTRICTIONS**

Section 2.01. Property Initially Subject to Restrictions. The property initially subject to these Community Area Restrictions shall be all of the real property described in Exhibit "A" attached hereto and made a part hereof. Said property, together with such other real property as from time to time may be added thereto and made subject to the Community Area Restrictions as provided in Section 2.02, shall be and is hereby referred to as the "Community Area" for the purposes of these Community Area Restrictions.

Section 2.02. Addition of Property Subject to Restrictions. Declarant may from time to time add real property to the real property initially subject to these Community Area Restrictions, thereby subjecting such additional real property to these Community Area Restrictions and constituting the same as part of the Community Area, provided that the real property being added is contiguous to the Community Area as constituted at the time of the addition.

Section 2.03. Requirements for Adding Property. The addition of any property as provided in Section 2.02 above shall be effective only upon satisfaction of the following requirements:

- (A) Declarant shall record a declaration, which may consist of one or more documents, which, among other things:
  - (1) describes the real property which is to be made subject to these Community Area Restrictions;
  - (2) sets forth or refers to such other and further limitations, restrictions, covenants and conditions which are to be applicable to such property;
  - (3) declares that such property is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these Community Area Restrictions; and
- (B) Declarant shall file with the Association a subdivision map of the property being added to the Community Area in connection with such declaration.

Section 2.04. Additional Restrictions Affecting Added Property. Any provision herein to the contrary notwithstanding, Declarant, by recording a declaration as provided in Section 2.03 above, may subject property added to the Community Area to such other and further limitations, restrictions, covenants and conditions as Declarant in its sole discretion deems necessary or desirable, provided that all such new or additional limitations, restrictions, covenants and conditions shall be subject and subordinate to these Community Area Restrictions and shall be exclusively applicable to the property added to the Community Area in connection with which the new or additional limitations, restrictions, covenants and conditions are imposed.

Section 2.05. Property Subject to Community Area Restrictions Limited. No property, except for that property described in said Exhibit "A" and except for property specifically added to the Community Area pursuant to this Article II, shall be deemed subject to these Community Area Restrictions, 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. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject to these Community Area Restrictions any property it may now own or hereafter acquire, other than the property described in said Exhibit "A" or in any such amendment.

Section 2.06. Lapse of Community Area Restrictions with Respect to Property Conveyed to Governmental Authorities or Public Utilities. These Community Area Restrictions shall automatically lapse and be of no further force and effect without further action of the Declarant or the Association with respect to any property within the Community Area which is conveyed by the Declarant or the Association to a governmental authority or instrumentality or to any public utility for use as a public street or roadway, curb, sidewalk, sewer or water facility, electrical or telephone line, or other public utility.

**ARTICLE III**  
**GENERAL CONDITIONS, LIMITATIONS AND RESTRICTIONS AS TO USE**

Section 3.01. Residential Lots. Each residential Lot shall be subject to the following rights, conditions, limitations and restrictions:

- (A) The rights of the Association or its duly authorized agents, with respect to each Lot, as provided for in Article V;
- (B) No improvement or other work which in any way alters any Lot from its natural or improved state existing on the date such Lot was first conveyed by the Declarant to an Owner, shall be made or done except upon strict compliance with the provisions of Section 4.02;
- (C) Unless otherwise permitted by the Association, each Lot shall be used exclusively for residential purposes; provided, however, that nothing in this subsection (C) shall be deemed to prevent:
  - (1) any person (including any artist, artisan or craftsman) from working inside of his or her own residence, provided that such person has no employees working on the Lot, does not advertise or offer any product or service for sale to the public upon or from such Lot, and does not otherwise cause a nuisance or fire, safety or health hazard in the Community Area or any part thereof; or
  - (2) the leasing or renting of any Lot from time to time by the Owner for residential purposes only and not for transient accommodation purposes;
- (D) Each Lot and any and all growth, foliage, landscaping and improvements located thereon shall be kept and maintained by the Owner thereof in good repair, clean condition, in compliance with this Declaration, the Association Rules and the AAB Rules, and in such manner as not to create any fire, safety or health hazard, all at the Owner's sole cost and expense;
- (E) The Owner of each Lot will maintain in good repair any fence or wall and the planter strip along any street boundary of his Lot, including the replacement of any tree in said planter strip that dies with a type of tree that has been approved by the AAB for planting in that area. The Owner of each Lot shall also maintain in good repair any fence or wall on his Lot within two feet of any common boundary between his Lot and his neighbor's Lot, unless he and his neighbor shall agree to demolish and remove the same; provided that each neighbor with a fence or wall along such a common boundary shall be liable to his neighbor for half the cost of maintenance or repair of such fence or wall incurred by such neighbor. The Owner of each Lot shall also maintain in good repair and clean condition any portion of a surface drainage culvert on his Lot, provided that any Owner who causes debris to collect in any drainage culvert shall be responsible for the removal of such debris;
- (F) No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements thereon, shall be placed or used upon any Lot;
- (G) No animals shall be kept and maintained on any Lot other than a reasonable number of suitable house pets kept for the Owner's personal pleasure and not for sale or other commercial purposes, and no animal shall be kept and maintained on any Lot which is a nuisance to neighbors. A reasonable number of suitable pets shall be deemed to be not more than two dogs, cats or small caged birds (other than poultry, which is prohibited) or any combination of the above not exceeding a total of two animals. Any exception to this rule requires prior written Board approval;
- (H) No signs whatsoever, including without limitations, commercial, political or similar signs, visible from neighboring property shall be erected or maintained upon any Lot except:
  - (1) such signs as may be required by legal proceedings;
  - (2) residential identification signs of a combined total face area of two (2) square feet or less;
  - (3) during the time of construction of any residence or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen; and
  - (4) not more than one "For Sale" or "For Rent" sign having a maximum face area of three (3) square feet, such sign to refer only to the Lot on which it is situated;

- (I) No house-trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any Lot at any time; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one year, which are used exclusively in connection with and during the construction of any work or improvement permitted under Section 4.02;
- (J) No truck of more than one ton capacity shall be kept, placed or maintained upon any Lot so as to be visible from any street; provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one year, which is used exclusively in connection with and during the construction of any work or improvement permitted under Section 4.02;
- (K) No accessory structures or buildings shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure of the residence thereon; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one year, which are used exclusively in connection with and during the construction of the main structure of the residence;
- (L) No trailer, truck, automobile, boat or other vehicle shall be constructed, reconstructed or repaired upon any Lot in such a manner that such construction, reconstruction or repair is visible from neighboring property, and vehicles not in operating condition shall not be kept or maintained upon any Lot so as to be visible from neighboring property or any streets; provided that nothing in this paragraph shall prevent an Owner from performing maintenance work and minor repairs on his own trailer, truck, automobile, boat or other vehicle in his garage;
- (M) No garbage, trash or other refuse matter shall be kept on any Lot, except in closed receptacles screened from view from any street, and no accumulated waste plant materials shall be kept on any Lot, except as part of an established compost pile maintained in such a manner so as not to be visible and not to create odors noticeable from neighboring property or except suitably bundled, tied and otherwise secured to permit disposal thereof by refuse collectors and also screened from view from any street;
- (N) No open storage of furniture, fixtures, appliances and other good and chattels shall be permitted on any Lot so as to be visible from neighboring property, and no washing or drying machines, outside clothes line or other outside clothes drying or airing facilities shall be maintained on any Lot unless the same are screened from view and are not visible from neighboring property or streets;
- (O) No open burning or any other exterior fires shall be permitted on any Lot, except barbecue fires, and no Owner shall permit any condition on his Lot which creates a fire hazard;
- (P) Vehicular access shall not be permitted from any Lot to a street over a boundary that is indicated on the subdivision map covering such Lot to have restricted access or over any strip of common area lying between the boundary of a Lot and a public street (except where such access over such common area is the only access from the Lot to any public street and an easement has been obtained from the Association), and the Owner of any such Lot may not cut any curb along any street adjacent to such boundary or common area;
- (Q) No Owner of a Lot shall park his car or permit his family, invitees and guests to park their cars on any public park or sidewalk area of any common area or on any portion of his Lot visible from any street, except in a garage or carport or on a paved driveway area;
- (R) The Owner of a Lot shall not violate or permit the violation on his Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matters relating to the use and development of his Lot;
- (S) A garage or carport shall be used for no other purpose other than the parking of vehicles and boats, unless the same be enclosed by a partition, wall, door or screen, normally kept closed; provided specifically that a garage or carport which is not so enclosed shall not be used for laundry or for storage purposes;
- (T) The Owner of a Lot shall not conduct, hold or permit to be held on his Lot more than one (1) "garage sale" every six (6) months, any such "garage sale" to last no more than two (2) consecutive days.

Section 3.02. Common Areas. The use and enjoyment of the Common Areas to be established, subject to approval by applicable government authorities, shall be reserved equally to all Owners of Lots within the Community Area, except as herein specifically provided, and each Owner shall have the non-exclusive right to such use and enjoyment along with each and every other Owner, subject, however, to the following rights, conditions, limitations and restrictions:

- (A) The rights of the Association and its duly authorized agents with respect to the Common Areas as provided for in Article V;
- (B) Such easements and rights-of-way as are reserved from the Common Areas at the time of conveyance thereof to the Association and such road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provisions of subsection 5.05(C);
- (C) That no improvement, excavation or other work which in any way alters any Common Area from its natural or existing state upon the date which such Common Area was conveyed to the Association shall be made or done, except upon strict compliance with and within the restrictions and limitations set forth in Section 4.03;
- (D) That except to the extent otherwise permitted in this Section and Sections 5.04, 5.05 and 7.02, there shall be no use of the Common Areas other than for recreational uses which do not injure or scar the Common Areas, increase the cost of maintenance thereof, cause embarrassment, disturbance or annoyance to Owners or disrupt the quiet enjoyment and use by Owners of their lots or the Common Areas; and without limitation to the generality of the foregoing:
  - (1) there shall be no camping on the Common Areas except as permitted by the Board of Directors of the Association by written license;
  - (2) there shall be no fires started or maintained on the Common Areas, except fires started and controlled by the Association in connection with the maintenance and preservation of property within the Community Area, and except for cooking fires in proper enclosures at proper sites designated and developed for such purposes by the Association; and
  - (3) no animals shall be permitted on the Common Areas except when accompanied by and under the control of the Owners to whom they belong;
- (E) That the rights of Owners to use and enjoy the Common Areas as specified herein shall be deemed to extend to the members of the families of all Owners and to their tenants, invitees and guests.

Section 3.03. Private Park.

- (A) Attached hereto as Exhibit "C" and made a part hereof is a description and plan of a private park, which shall be a Common Area granted and conveyed to the Association for the exclusive use, benefit and enjoyment of the Owners, lessees and occupants of Lots in the Community Area, subject to the rights, obligations, conditions, limitations and restrictions affecting Common Areas set forth in Sections 3.02, 4.03 and 5.04 hereof.
- (B) In addition to the rights, obligations, conditions, limitations and restrictions affecting Common Areas set forth in Sections 3.02, 4.03 and 5.04 hereof, the area of the private park described in said Exhibit "C" (hereinafter referred to as the "Private Park") shall also be subject to the following covenants, conditions and restrictions:
  - (1) The Private Park shall be improved, maintained and used exclusively for private park, playground and recreational purposes;
  - (2) The obligation of the Association to provide for the upkeep and maintenance of the Private Park as set forth in Subsection 5.04(C) hereof may be enforced by the Director of Parks and Recreation of the City and County of Honolulu or his and/or its successor (hereinafter referred to as the "Director"). In the event that the Association should fail to properly maintain the Private Park, the Director is hereby authorized to perform or to cause to be performed any necessary maintenance work on the Private Park. Upon the failure of the Association to promptly reimburse the Director for all costs and expenses incurred by the Director in performing any such maintenance work, the Director shall have a lien upon the Private Park and all improvements thereon as may be permitted

by law until such time as all such costs and expenses for maintenance work performed by the Director have been fully repaid to the Director.

- (C) Anything in these Community Area Restrictions to the contrary notwithstanding, the provisions of these Community Area Restrictions as they affect the Private Park shall continue in full force and effect in perpetuity and may not be terminated, amended or repealed and no disposition may be made of all or any portion of the Private Park without the written approval of the Director of Land Utilization of the City and County of Honolulu or his and/or its successor.

**ARTICLE IV**  
**IMPROVEMENT OF PROPERTY**

Section 4.01. Architectural Advisory Board: Establishment, Organization, Rights, Powers and Duties.

- (A) There shall be an Architectural Advisory Board, hereinafter referred to as the "AAB", the function of which shall be to oversee and exercise control over the improvement of property in the Community Area, all for the purpose of maintaining the standards and plan of development.
- (B) The AAB shall consist of three (3) members, at least one of whom shall be a registered professional architect and shall be designated the Architect Member but need not be a resident or Owner of a Lot in the Community Area, and two of whom shall be residents or Owners of Lots in the Community Area but need not be architects, provided that the members of the AAB appointed by the Declarant need not be residents or Owners of Lots in the Community Area. The architect member shall be compensated in accordance with arrangements made between the Association and such member. The Owner/resident members of the AAB shall receive no compensation for services rendered but shall be reimbursed for all reasonable expenses incurred in the performance of their duties as members of the AAB.
- (C) The right to appoint and remove members of the AAB shall be reserved to and vested in the Declarant until such time as Declarant has conveyed title to ninety percent (90%) of the initial one hundred thirty-five (135) lots in the Community Area to various Owners, after which the Association shall have the sole right to appoint and remove all members and to replace any member previously appointed by the Declarant. If at any time the Declarant should fail to exercise its then existing right to appoint or remove members and/or gives written notice to the Association of its intention to waive such right, the Association shall thereupon have the right to appoint and remove all such members.
- (D) It shall be the duty of the AAB to consider and act upon all such proposals or plans for the improvement of property in the Community Area as are submitted to it pursuant to this Declaration and to perform such other duties as may be delegated to it from time to time under this Declaration. In performing its duties, the AAB may consult personally with the persons or parties who submit proposals or plans for AAB approval.
- (E) The AAB shall meet from time to time as is necessary to perform its duties hereunder. The vote or written consent of any two members of the AAB shall constitute authority for the AAB to act, unless the unanimous vote or consent of its members is otherwise required by this Declaration. The AAB shall keep and maintain a record of all proposals and plans submitted to it and the specific action taken with respect to each and a record of all other actions taken by the AAB.
- (F) The approval of the AAB of any plans and specifications for any work done or proposed or submitted in connection with any matter which requires the approval of the AAB, shall not constitute a waiver by the AAB of its right to withhold its approval of any similar plans and specifications or any other matter subsequently submitted for approval, whether or not by the same person or party.
- (G) Upon the request of any Owner and payment to the Association of a reasonable fee, the AAB shall issue to the Owner a statement executed by at least two of its members stating that as of a certain date:
  - (1) all improvements and/or work made or done on the lot of the Owner comply with these Community Area Restrictions, or
  - (2) such improvements and/or work do not comply with these Community Area Restrictions.

In the event such statement indicates non-compliance with these Community Area Restrictions, the statement shall also identify the non-complying improvements and/or work and set forth the particular reasons for non-compliance. The AAB shall issue such statement within thirty (30) days after demand and payment therefor has been made, and the statement shall be in form suitable for recordation in the Bureau of Conveyances or filing in the Office of the Assistant Registrar of the Land Court. Any purchaser or lessee from the Owner or mortgagee or holder of any other encumbrance on the property covered by such statement shall be entitled to rely on the statement with respect to all matters contained therein, and such matters shall be deemed conclusive as between the Association, the Declarant, the AAB, all Owners and the holder of any such encumbrance.

- (H) Neither the AAB nor any member thereof shall be liable to the Association, to any Owner or to any other person for any loss, damage or prejudice suffered or alleged to be suffered as a result of any AAB action or the issuance of any statement pursuant to subsection (G) above, provided that the members of the AAB have acted in good faith upon knowledge actually possessed by them.
- (I) Any provision in this Section 4.01 notwithstanding, the rights, powers and duties of the AAB shall not be deemed to limit or affect in any way the rights of the Declarant to develop and make improvements, alterations or repairs to real property owned by the Declarant.

Section 4.02. Residential Area: Building Requirements. Any new construction, improvement, alteration, repair or other work undertaken upon any Lot which is or may be visible from neighboring property or streets, shall be subject to the conditions, limitations and restrictions set forth below (hereinafter referred to as the "Building Requirements"):

- (A) Compliance with Laws, Codes and Ordinances. All work undertaken within the Community Area shall comply with the appropriate existing laws, rules, regulations, codes and ordinances. Where requirements hereunder are more stringent than the applicable laws, rules, regulations, codes and ordinances, the requirements hereunder shall govern.
- (B) General Requirements.
  - (1) Construction of the dwelling and garage or carport shall commence not later than 24 months from the date that the Owner receives title to the Lot, and shall be completed within 12 months from the date of commencement of construction. Failure by the Owner to either commence or to complete said construction within said times shall constitute a breach of these Building Requirements, and upon such breach, the Association shall be authorized and empowered to enter upon the Lot to landscape same and thereafter to maintain same until construction has commenced, all at the Owner's expense, as set forth in Section 5.05 of these Community Area Restrictions.
  - (2) Consultation Service. Before preparation of preliminary drawings, the Owner may arrange for consultation with the architect member of the AAB for suggestions as to siting of a dwelling on the Lot of his choice and assistance in interpretation of these Building Requirements. The Association will pay for the first hour of consultation only. Any additional consultation will be at the Owner's expense.
  - (3) Preliminary Drawings.
    - (a) Before proceeding with the working drawings or with any work at the site, the Owner shall submit to the AAB, and secure their approval of one (1) copy of the preliminary drawings and a preliminary landscaping plan prepared by or under the direct and responsible supervision of a registered architect. Plans, when submitted, shall be accompanied by a letter of transmittal from the architect requesting preliminary approval and stating the estimated construction cost of the dwelling proper. The preliminary drawings shall consist of:
      - (i) a site plan at either a 1/8 inch = 1 foot or 1:10 feet scale, showing the existing and proposed topography (2 foot contours), location and top-of-wall elevations of retaining walls and fences, setback lines, view channels, outlines of the proposed structure(s) and paved areas, drainage easements (if any), and materials and methods for retaining soil on cut embankment slopes.

- (ii) a reduced-scale site plan at 1 inch = 40 feet scale, showing accurately the same items and details as the aforementioned site plans as well as other major structures such as swimming pools, greenhouses, etc. Further, roof lines for all structures and lot drainage control facilities (surface swales or other design) must be indicated. This plan shall also indicate the elevations, referred to City and County Datum based on mean sea level, of the floor levels, roofs and roof ridges. This plan will be used to assemble a composite layout plan for the subdivision, showing the relationship of proposed locations of all major structures and drainage control facilities. This layout plan will assist the AAB in its review of house sitings and may result in suggestions which could be of benefit to the Owner.
  - (iii) a house plan at either a 1/8 inch = 1 foot or 1/4 inch = 1 foot scale, showing floor plans for each floor. Floor elevations shall be indicated in numerals and shall refer to City and County Datum, based on mean sea level.
  - (iv) exterior elevations at either a 1/8 inch = 1 foot or 1/4 inch = 1 foot scale, showing each exposed side of the proposed structure(s), indicating proposed materials.
  - (v) a longitudinal section at either a 1/16 inch = 1 foot or 1/18 inch = 1 foot scale through the structure and property, commencing at the street and extending to the opposite end of the property.
  - (vi) A land survey of the site certified and stamped by a registered surveyor showing the existing topography contours of the site at two (2) foot contours, lines of streets, pavements, boundaries, dimensions, easements, including view channel easements, and other improvements.
- (b) The AAB will approve the preliminary drawings, provided that they comply with all of the requirements hereunder and are, in the AAB's opinion, suitable for the Community Area and in accord with the objectives as described in the introduction to this Declaration. In such cases where approval of the preliminary drawings is contingent upon conformance with certain recommendations, requirements or corrections, a revised set of preliminary drawings shall be submitted for approval prior to proceeding with working drawings.
  - (c) At the time of submission of the preliminary drawings, the Owner shall also deposit with the Association the sum of money established from time to time pursuant to the Association Rules and/or the AAB Rules to cover the cost of review of the preliminary drawings by the architect member of the AAB.
- (4) Working Drawings.
- (a) Before commencing any work at the site and prior to submittal of plans to the City and County for a building permit, the Owner shall submit to the AAB, and secure its approval of two (2) copies of the completed working drawings and specifications prepared by or under the direct and responsible supervision of a professional architect registered by and in the State of Hawaii and so certified by him and two (2) copies of the final landscaping plan prepared by a landscape architect registered in the State of Hawaii. The final landscaping plan shall include any proposed structures above or below grade, such as swimming pools, retaining walls, trellises and fences, and an irrigation plan, which should provide for irrigation of the planter strip between the sidewalk and the street.
  - (b) The AAB will approve the submitted working drawings and final landscaping plan provided that they comply with the conditions under which the preliminary drawings were approved and meet all requirements hereunder.
  - (c) At the time of the submission of the working drawings, the Owner shall also deposit with the Association the sum(s) of money in the amounts and for such purposes as are established from time to time pursuant to the Association Rules and/or the AAB Rules. Any balance of said deposits shall be refunded to the Owner at the time and subject to the

terms and conditions established from time to time in the Association Rules and/or the AAB Rules.

- (5) Variances. Individual solutions, at variance with the requirements herein, or with substantial departures from the approved preliminary drawings, will be considered by the AAB on their architectural merit and on their contribution to the objectives stated in the introduction to this Declaration. Such variances or departures from the approved preliminary drawings shall be specifically requested from the AAB in writing by the Owner or his architect and such request shall detail the reasons for the requested variance.
- (6) Design and Construction Details:
  - (a) The dwelling, exclusive of garage or carport and attached or detached open lanai(s), shall have a minimum enclosed floor area of 1,500 sq. ft.
  - (b) The dwelling proper, including garage or carport and lanai(s), shall cost not less than \$100,000.00, such cost to be exclusive of costs for swimming pools, retaining walls which are not a part of the dwelling foundation, and other lot improvements, and exclusive also of appliances and interior furnishings including carpets and drapery. The Owner will, upon request, furnish to the AAB a written statement by the supervising architect or other party acceptable to the AAB certifying that, to the best of his knowledge and belief, the cost of the dwelling proper, including garage or carport and lanais, will be at least \$100,000.00 and containing such data in reasonable detail as may be necessary to support such certification.
  - (c) A double-car garage or carport containing not less than 400 square feet of parking area under roof shall be attached to the dwelling or other principal building; provided, however, that a detached double-car garage or carport may be substituted in cases where an attached garage or carport is not feasible. Every garage or carport, whether attached or detached, which has a vehicular entrance facing a street shall contain not less than an additional 60 square feet of covered floor area for service and storage facilities. Such additional area shall be adequately screened from view from the street. Single-car garages or carports will not be permitted. However, garages and carports for more than two cars will be permitted, provided the design is appropriate.
- (7) Landscaping. The Owner shall, within ninety (90) days after substantial completion of the dwelling, landscape the Lot in accordance with the approved final plans and thereafter satisfactorily maintain said landscaping. Lots fronting on two streets shall be landscaped along both frontages.
- (8) Alterations and Additions. The General and Special Requirements herein shall also govern future buildings, structures and improvements and any alterations or additions thereto.
- (9) Architect's Statement of Construction According to Approved Plans. In order to assure that construction of improvements are completed according to plans approved by the AAB, the Owner must provide the AAB a written statement from Owner's architect following completion of construction, which statement confirms that said construction was completed according to the plans approved by the AAB. In addition to any and all other remedies available to the Association, its Board or the AAB for a breach of any covenant of this Declaration, no future request for construction plan approvals will be granted to any owner who has previously failed to supply such architect's statement in breach of this covenant.

(C) Special Requirements.

- (l) View Channel Easements, Setback Lines, Lot Coverage:
  - (a) View Channel Easements are indicated on a map of same and accompanying descriptive documents, copies of which shall be maintained on file at the office of the Declarant and the Association. The setback lines for each Lot shall conform to the requirements of the Comprehensive Zoning Code of the City and County of Honolulu (Ordinance 3234, as amended); provided, however, that any garage or carport with a vehicular entrance facing a

public street shall be setback at least 20 feet from the front property line along such street except in those cases where the terrain is such that extensive excavation or embankment would be necessary or where the lot has an unusually shallow depth or odd shape. The building area of each Lot is that portion of the lot lying outside of the setback and View Channel Easements on the lot. No structure or vertical support member of any structure within any setback or within the horizontal area of any View Channel Easement shall protrude into the air space above the plane of such View Channel Easement, except for roof overhangs which may protrude therein a horizontal distance of not more than four (4) feet. The plane over any Lot, as established by the View Channel Easement affecting such Lot, shall be a plane beginning at a vertical height above the mauka or higher corner(s) of the lot and sloping toward the lower corner(s) at a certain specified ratio as indicated on the map of the View Channel Easements or on the accompanying descriptive documents. The lot coverage area (being the total area within the perimeter lines connecting the outsides of foundation walls or the outer vertical support members for the first floor of all buildings on the lot) shall amount to not more than one-third (1/3) of the area of the Lot.

- (b) No trees, hedges or other plants within the horizontal area of a View Channel Easement shall be allowed to grow above or into the air space above the plane of such View Channel Easement and shall from time to time as necessary be removed or trimmed by the Owner to prevent growth above or into the air space above the plane of such View Channel Easement.
- (c) The AAB may grant variances to the View Channel Easements where they impose hardship on an Owner. It is to be noted that neither the Declarant nor the Association guarantees to any Owner that such Owner will have any unobstructed view channel or view of any kind.

(2) Grading:

- (a) All site work required on any Lot shall be done only in accordance with plans approved by the AAB and at the expense of the Owner.
- (b) Fill or top soil material brought to a Lot site by the Owner shall be free of adobe, red dirt, termites and deleterious matters.
- (c) The Owner shall obtain a grading permit for cuts and fills as required by the Ordinances of the City and County of Honolulu and shall abide by all requirements of those ordinances.
- (d) Cut and fill areas shall be shaped to blend into the adjacent land forms, and where exposed, shall be landscaped and treated in an attractive manner.

(3) Drainage.

- (a) A general plan for lot drainage is on file in the office of the Declarant and at the office of the Association. The Owner is required to direct his architect to examine said general plan before preparing the site plans. The flow of surface or subsurface drainage onto, across or from each Lot must not be obstructed. Such run-off shall be dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to property. The AAB will closely scrutinize the proposed location of lot drainage facilities and may suggest revisions to provide for acceptance of discharge at certain points or locations along lot boundaries. The Owner, however, will be responsible for the actual design of these facilities and be liable for all claims for damages resulting therefrom. The AAB will not unreasonably withhold approval of any design for lot drainage facilities but will disapprove designs which, in its opinion, are impractical or do not adequately consider the possible adverse effects on adjoining property.
- (b) Subsurface drainage systems have been installed within certain Lots where engineered embankments were constructed over natural run-off channels. The Owner of any affected Lot will be given sketches, upon request, designating the location of these subdrains and their points of discharge. It is recommended that the individual lot drainage facilities provide for acceptance of discharge from the subdrain systems. Should the construction of lot improvements interfere with the operation of any subdrain, the Owner will be required to re-route or alter the affected subdrain in order to maintain it in effective operation.

- (4) Materials. All materials used for structures shall be new and of a quality consistently associated with that used on superior custom designed homes.
- (5) Ground Termite Treatment:
  - (a) Soil under all concrete slabs on ground and under all building floors, whether on ground or over air space, and under all footings and masonry foundation walls shall be treated against subterranean termites by a reliable, established and licensed termite control agency.
  - (b) Treatment shall be guaranteed in writing by said agency against termite infestation for a period of five years. The guarantee shall include one automatic annual inspection service and retreatment of any infested area without extra cost within the guaranteed period.
  - (c) Chemicals used outside of the buildings or in accessible spaces under buildings shall be non-poisonous to children, plants and pets.
- (6) Foundations:
  - (a) Portions of certain Lots will be filled and in some instances the filling will be extensive. A report prepared for the Declarant by a soils engineer indicates the presence of clay soils in the Community Area. To the best of the Declarant's knowledge, areas within the Community Area which will be filled are to be filled and compacted in accordance with approved engineering methods. However, ground settlement of the fill areas is possible. In view of the existence of clay soils and filled areas, the Owner through his architect should give due consideration to the design of the foundation systems of all structures, including without limitation the dwelling, walls and swimming pool. Plans showing filled areas are on file at the office of the Declarant and the Association. It shall be the Owner's responsibility to direct his architect to examine these plans and arrange for subsurface soil investigation and, thereafter, to design his dwelling accordingly. Sketches of lots showing embankments will be supplied to the Owners and their architects upon request; however, grades and contours indicated thereon are not guaranteed and are subject to verification by Owner or his architect.
  - (b) All retaining walls, and any foundation placed upon embankments or filled areas of more than two feet, shall be designed by a registered architect or structural engineer.
  - (c) All framing lumber shall be pressure-treated against termites and rot and shall carry a 5-year guarantee against termite damage.
- (7) Single Wall Construction. Wood siding, if used in single-wall structures, shall have a minimum thickness of 1" net for all load-bearing sections in order to obviate the need for girts.
- (8) Double Wall Construction. Outside siding for double wall construction may consist of 5/8" material, or equal, subject to the approval of the AAB. Interior surfacing material shall not be less than 1/2" thick.
- (9) Roofs:
  - (a) Slope: In no event shall more than forty percent (40%) of the total roof area be flat. The surface of all flat roof areas shall be dark gravel. All roofs shall be constructed such that the roof will positively drain to roof drains or downspouts removing all water from flat areas of the roof, if any.
  - (b) Shake or wood shingle roofs shall slope at a minimum ratio of 4 to 12 for eaves and roofs.
  - (c) AAB will consider approval of the use of other types of building materials such as clay or cement tile roofs in dark earth tone shades.
  - (d) Materials and paints for trim and fascia surfaces shall be non-reflective and non-glaring.
  - (e) Roof overhangs shall be substantial to reduce the amount of splash on exterior walls near ground levels, especially where there are door and window openings.
  - (f) Variances will be considered on the basis of the objectives stated in the introduction to this Declaration.

- (10) Structural Analysis. In reviewing building plans, the AAB will not undertake any structural analysis nor make any representations as to the sufficiency of the design or the proposed construction. This will be a matter solely for determination by the Owner and his architect.
- (11) Height of Buildings and Antennas:
- (a) No portion of any building or other structure shall be more than eighteen (18) feet above the highest existing grade (on the date such lot was first conveyed by the Declarant to an owner) or finish grade, whichever is lower, except for wood burning fireplace chimneys approved by the AAB, provided that portions of the pitched area of any roof constituting not more than five percent (5%) of the total lot area may also extend above the aforesaid height limitation so long as such portions of the roof do not substantially obstruct the view from any adjoining lot as determined by the AAB.
  - (b) All radio or television antennas shall be enclosed within the roof or exterior walls.
  - (c) Transmission antennas will not be permitted in the Community Area.
- (12) Height of the Under-House:
- (a) Vertical support members of the lowest floor shall not be longer than 9 feet measured from the finish floor level to the finish ground grade or to the top of a continuous garden wall serving as a foundation.
  - (b) Knee bracing shall be avoided or concealed.
  - (c) Because of the visual importance of the under-house construction, individual solutions will be reviewed and approved on the basis of the objectives stated in the Introduction.
- (13) Garden Walls and Fences:
- (a) No garden wall or fence built along property lines and within the setback areas or View Channel Easements, whether or not used as a retaining wall, shall be higher than six (6) feet at any point, as measured from the top of the wall to the existing or approved finished grade level at the nearest point on the property line, provided, however, that walls or fences between the setback lines and the property line at street frontage shall not be higher than four (4) feet unless the area between such walls or fences and the property line at street frontage is adequately landscaped.
  - (b) Any concrete block walls, fences or screens which are visible from the street shall be sufficiently plastered or otherwise finished so that no joints will show. Split-face or other textured type masonry units may be used with AAB approval if incorporated within the overall design of the structures to be constructed on the Lot.
  - (c) Finish materials used for walls and fences especially along front property lines shall be moss rock, stucco or materials similar to exterior materials of the building.
- (14) Driveways:
- (a) Driveways shall be paved with concrete.
  - (b) Drop driveways shall be constructed by the Owner prior to any other work being done and shall be used during construction in order to prevent damage to existing concrete gutters, curbs, sidewalks and any underground utility lines. Any damage caused by the Owner, his contractor or agent, shall be the responsibility of the Owner.
- (15) Utilities. All utility service lines, wires, conduits, pipes and ducts, including those for electric, gas, telephone, water and sanitary sewer service, shall be underground.
- (16) Painting:
- (a) Colors for exterior walls and surfaces shall be non-glaring and muted.
  - (b) Wherever painted surfaces are specified, paint shall be applied in a minimum of two coats; one prime coat and a finish coat.

- (c) All paint shall be applied from manufacturer's receptacles, undiluted, except as clearly stated or permitted by the manufacturer's instructions.
- (17) Doors and Windows. All aluminum windows and doors and/or window and door framing facing the street shall be anodized bronze.
- (18) Refuse Can Enclosures. Unless adequately screened provisions for storage of refuse cans are made within the house or garage or carport, the Owner shall construct refuse can enclosures in the front yard and within 20 feet of the roadway curb to conceal refuse cans from view, and such enclosures shall conform to a general design developed by the AAB.
- (19) Mail Boxes. Mail boxes, house numbers, and name signs shall be of attractive and superior design, installed flush with wall surfaces where possible and not be in conflict with postal regulations.
- (20) Air Conditioning System. Prior to the installation of air conditioning systems, the Owner shall secure the written concurrence of the AAB as to the location and type of system. Such air conditioning system shall be sound treated to prevent noise nuisance.
- (21) Noise Abatement. Should undue noise result from the operation of the air conditioning and/or swimming pool filtering pump unit or units, the Owner shall design additional soundproofing methods and shall upon approval of these methods by the AAB proceed expeditiously with necessary adjustments.
- (D) Time Limitation For AAB Approval. Except for approvals for variances or other approvals for which a specific time limit is set forth, the AAB shall act upon all requests for approvals required to be obtained pursuant to this Section 4.02 within forty-five (45) days after the submission of all required documents by the Owner. If the request is not approved or disapproved with such 45-day time period, the request shall be deemed approved.
- (E) Specific Limitations. Regardless of the cost or replacement value of same, the following specific conditions, limitations and restrictions shall be applicable to any improvement, alteration or repair undertaken upon any Lot:
  - (1) no reflective finishes shall be used upon exterior surfaces (and no mirror or highly reflective glass shall be used) if such exterior surfaces or glass are visible from neighboring property;
  - (2) no metal, vinyl or plastic wall siding visible from neighboring property shall be permitted unless the same is maintained in a non-reflective condition;
  - (3) no gas tanks will be permitted which are visible from neighboring property;
  - (4) no permanent exterior electric lighting of any sort shall be installed or maintained, the light source of which will be offensive to the Owners of neighboring Lots;
  - (5) no second-hand or used lumber or other material shall be used in any construction without the prior approval of the AAB;
  - (6) rain gutters shall be of a matching type for the entire dwelling unit served and, except for copper gutters, shall be painted in non-reflective colors which match the trim or siding colors of the dwelling unit;
  - (7) if visible from neighboring property or the street, no accessory structures, such as fences, courtyard walls, covered lanais, playhouses, sheds, dog kennels or other animal enclosures, shall be permitted unless painted in colors complementary to the main dwelling unit, and no such accessory structure which is visible from neighboring property or the street shall be constructed or made out of plastic, wire, chicken wire, chain link fencing material or unpainted reflective materials; and
  - (8) no aluminum, plastic or canvas awnings shall be erected so as to be visible from the street.
- (F) Except as is reasonably necessary for and incident to the improvement, alteration, repair or other work undertaken upon any Lot, plans for which the Owner has obtained the approval of the AAB:
  - (1) there shall be no grading, excavation or fill undertaken upon any such Lot;
  - (2) there shall be no change in the natural or existing drainage for surface water upon any such Lot; and

- (3) no power, telephone or other utility lines, wires, conduits, pipes or ducts which would be visible from neighboring property shall be installed upon any such Lot unless AAB approval is first obtained in the manner provided in subsection 4.02(B) above.
- (G) In connection with the construction of any improvement on any Lot:
  - (1) the Owner of such Lot shall be strictly responsible to insure that all trash, debris and other refuse material is properly disposed of and that no trash, debris or other refuse material is placed on any other Lot or property in the Community Area; and
  - (2) in any contract for the construction of improvements, the Owner of such Lot shall insure that there is adequate provision made therein for the proper removal and disposal of trash, debris and other refuse material.
- (H) In the event of any violation of the provisions of this Section 4.02, in addition to any other right or remedy of the Association and without liability for trespass, damage or otherwise, the Association may take any and all reasonable steps to restore the Lot upon which such violation has occurred to its existing condition prior to the violation, or otherwise to correct, eliminate or mitigate such violation, and may assess the Owner of such Lot, or in the event that trash, debris or other refuse material from one Lot is being disposed of on another Lot, may assess the Owner of the Lot from which the trash, debris or other refuse material originates, for all costs and expenses incurred in connection therewith.

Section 4.03. Common Areas: Specific Conditions, Limitations and Restrictions on Improvement. No improvement, alteration, repair or other work that in any way alters a Common Area from its natural or existing state on the date when such Common Area was acquired by the Association, except for routine maintenance and repair, shall be made or done except in compliance with the following conditions, limitations and restrictions set forth below:

- (A) Except in connection with the installation of a subsurface utility system pursuant to subsection (D) below, no person other than the Association or its duly authorized agents, shall undertake any grading, excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, grass or other vegetation from or plant any tree, shrub or other vegetation upon any Common Area.
- (B) Except as provided in subsection (C) below, the Association shall not construct or reconstruct any improvement or refinish or alter the exterior of any part of any existing improvement located or to be located upon any Common Area, and the Association shall not undertake any grading, excavation or fill, or change the natural or existing drainage or surface of waters, or remove any trees, shrubs, grass or other vegetation upon any Common Area without first obtaining the approval of the AAB. The Association shall submit plans and specifications for any such work which plans and specifications shall be in such form and contain such information as the AAB may from time to time require. The AAB shall approve the plans and specifications submitted to it pursuant to this subsection only if the AAB finds that the proposed work will not, because of its design, materially prejudice any Owner in the use and enjoyment of his property. Such approval shall be in writing. A disapproval of plans and specifications shall also be in writing and shall set forth with particularity the reasons for such disapproval. If the AAB does not act on plans and specifications within forty-five (45) days after the submission thereof, such plans and specifications shall be deemed approved as submitted. In the event of disapproval, any member of the Board of Directors may submit to a meeting of the Association duly called for the purpose the question of whether to abandon the proposed improvement, alteration or work or to have the same redesigned and resubmitted to the AAB for approval.
- (C) The Association may at any time:
  - (1) reconstruct, replace, repair or refinish any improvement or portion thereof upon a Common Area in accordance with the last plans thereof approved by the AAB, or if such improvement existed upon the Common Area when such Common Area was conveyed to the Association, then in accordance with the design, finish and standard of construction of such improvement when such Common Area was conveyed to the Association;
  - (2) construct, reconstruct, replace, repair or refinish any road improvement upon any portion of the Common Area designated on a subdivision map as a road or street;

- (3) add or replace any trees or any other vegetation upon a Common Area and, to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover;
  - (4) place and maintain upon any Common Area such signs and markers as the Association may in its sole discretion deem necessary for the identification of the Community Area, for the identification of roads, for the regulation of traffic, including parking, for the regulation and use of the Common Areas and for the health, welfare and safety of Owners and the public, provided that the design of any such signs or markers shall first be approved by the AAB.
- (D) Any Owner may install and maintain within a Common Area a portion of any subsurface utility system which serves such Owner's Lot, provided that the Owner first obtains approval of the AAB in the manner set forth in subsection (B) above and an easement therefor from the Association.

Section 4.04. Presumption of Compliance. All of the following described improvements, alterations and other work shall for all purposes of this Declaration be conclusively presumed to be in compliance with the conditions, limitations and restrictions of this Article IV and any other provision of the Community Area Restrictions relating to conditions, limitations or restrictions on the improvement of property:

- (A) those existing or maintained within or upon any property within the Community Area at the time such property became a part of the Community Area;
- (B) those existing or maintained within a lot, or Common Area at the time such area was first conveyed by the Declarant to an Owner or to the several Owners or to the Association, as the case may be;
- (C) those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant.

## **ARTICLE V** **COMMUNITY ASSOCIATION**

Section 5.01. Establishment. There shall be a non-profit corporation known as the "Waialae Iki V Community Association" (herein referred to as the "Association") which shall have and be empowered with the rights and be charged with the duties, obligations and responsibilities set forth in this Declaration and in its Charter and By-Laws.

Section 5.02. Membership.

- (A) Each and every person, corporation, partnership or other legal entity being the Owner of any lot within the Community Area (herein referred to as an "Owner") shall be a member of the Association;
- (B) For the purposes of determining membership status in the Association, the term "Owner" of a lot within the Community Area shall be deemed to include:
  - (1) an owner of any lot within a residential area;
  - (2) the Declarant, so long as the Declarant or either of the parties collectively referred to as the Declarant is the owner of any Lot within the Community Area;
- (C) No membership shall be terminated or forfeited and no member shall be expelled, except upon transfer of his interest in the Community Area which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale of such interest therein, the vendor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed or assignment of lease in compliance with said agreement of sale or reversioning in the vendor in the event of termination of said agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner, and upon payment of all his indebtedness to the Association on account of unpaid assessments or otherwise.
- (D) The membership of the Association shall be divided into two (2) classes of membership as follows:
  - (1) Class A members shall include all owners described in paragraph (B) (1); and
  - (2) the Class B member shall be the Declarant;

- (E) The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be exclusively as set forth in this Declaration and the Charter and By-Laws of the Association.

Section 5.03. Voting Rights. Members of the Association shall be entitled to vote as follows:

- (A) Each Class A member shall be entitled to one (1) vote for each Lot owned, as the term "Lot" is defined in this Declaration; provided that if more than one person or entity owns a particular Lot, any one of said persons or entities shall be entitled to exercise the one vote attributable to said lot upon the unanimous consent of all co-Owners of the Lot;
- (B) The Class B member (Declarant) shall be entitled to three (3) votes for each Lot owned by it or either party collectively referred to as the Declarant.

Section 5.04. Duties and Obligations of the Association. The Association shall accept, undertake and perform each of the following described obligations, duties and responsibilities:

- (A) The Association shall acknowledge and accept as part of the Community Area all property which may be added to the Community Area from time to time pursuant to Section 2.02 and shall accept all Owners of such property as members of the Association with all of the rights and privileges specified herein and in the Charter and By-Laws of the Association.
- (B) The Association shall accept title to all Common Areas and other property conveyed to it from time to time, pursuant to Section 7.02.
- (C) The Association shall provide for the upkeep and maintenance in good order of all Common Areas and other real property owned by the Association and all improvements thereon of whatsoever kind and nature.
- (D) The Association shall pay all real property taxes and assessments levied upon all or any portion of the common areas, except for such taxes and assessments upon portions of the Common Areas which are duly assessed directly to any Owner or Owners.
- (E) The Association shall assess and collect the assessments and maintain the operating funds of the Association in accordance with Article VI.
- (F) The Association shall obtain and maintain in force the following policies of insurance:
  - (1) fire and extended coverage insurance on all improvements owned by the Association and located upon or within any Common Area, 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 improvements as from time to time determined by the Association;
  - (2) liability insurance with limits of not less than \$500,000.00 per person and \$ 1,000,000.00 per occurrence, insuring against any and all liabilities for bodily injury or death which may arise out of the ownership, maintenance or use of the Common Areas;
  - (3) property damage liability insurance and with deductible of not more than \$2,000.00 and a limit of not less than \$500,000.00 per accident; and
  - (4) if the same can be obtained at reasonable expense, an errors and omissions policy covering the officers and directors of the Association with such limits as the Board deems appropriate.

The policy or policies of insurance referred to in paragraphs (F) (2) and (F) (3) above shall name as insureds: (a) the Association and its officers, the Board and its members, the AAB and its members and the employees of the Association, Board and AAB, any holder of a first mortgage lien on the Common Areas, and (b) with respect to any liability arising out of the maintenance and use of the Common Areas, 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 insurer or insurers to pay any amounts in excess of the maximum limits stated herein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall contain a provision expressly waiving any and all rights of subrogation to claims against the Declarant, its representatives and employees, and against 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 of Directors of the Association.

- (G) To the extent permitted in Section 4.01, the Association shall appoint and remove members of the AAB and determine their compensation to insure that at all reasonable times there is a duly constituted and appointed AAB.
- (H) The Association shall take any such action as may be reasonable and prudent to enforce compliance with these Community Area Restrictions, any Association Rules established by the Association and such other and further covenants, conditions, limitations and restrictions as may be in force with respect to property in the Community Area and the Owners thereof.

5.05 Powers and Authority of Association. Except as expressly limited in its Charter, By-Laws and this Declaration, the Association shall have all and any power as may be necessary or appropriate 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 its Charter, By-Laws and this Declaration or which may be necessary or proper, or which may be authorized or warranted by vote of the Association, for the peace, health, comfort, security, safety and/or general welfare of its members, the Community Area and all real and personal property therein. Without limitation to the generality of the foregoing, the Association shall have the following powers:

- (A) Without liability to the Owner or Owners, or occupant of a Lot or any other person for trespass, damage or otherwise, the Association may enter upon any Lot and any improvement (other than a residence) thereon at any time for the purpose of maintaining and repairing such Lot and/or improvement, if for any reason the Owner or Owners or occupant thereof have failed to maintain and repair such Lot as required under this Declaration, the Association Rules or the AAB Rules, or for the purpose of removing, reconstructing, refinishing, altering or repairing any improvement, landscaping or growth maintained or existing upon such Lot in violation of this Declaration, the Association Rules or the AAB Rules, or for the purpose of landscaping such Lot and maintaining same in accordance with this Declaration, the Association Rules or the AAB Rules, or for the purpose of correcting, remedying or mitigating any condition on such Lot which constitutes a violation of this Declaration, the Association Rules and/or the AAB Rules, or creates a risk of fire, flooding, damage, injury or other hazard to persons or property. The Association may maintain and repair any roads, sidewalks, parks or other public areas in or adjoining the Community Area, including landscaping and planting the same and repairing improvements thereon when, in the opinion of the Board of Directors, public authorities have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority, in its own name and on its own behalf or in the name of and on 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 this Declaration, the Association Rules or the AAB Rules or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration, the Association Rules or the AAB Rules, or to assess fines for violations of this Declaration, the Association Rules or the AAB Rules in accordance with a schedule of or procedure for fines adopted as a part of the AAB Rules or the Association Rules. The Association shall also have the authority to contract for and to provide various services to Owners, such as security and landscaped maintenance services and telecommunication service, provided that adequate provisions are made to insure that such services are paid for by those Owners benefiting from same by special assessment or otherwise.
- (B) In exercising or fulfilling any of its functions, duties or obligations under this Declaration, the Association Rules or the AAB Rules, and without limiting any other power or authority of the Association, the Association shall have the power and authority:
  - (1) to contract and pay for or otherwise provide for the maintenance, restoration and repair of any improvements located upon Common Areas, to contract and pay for or otherwise provide for the construction of improvements or other work upon Common Areas on such terms and conditions as the Association shall deem appropriate, and to discharge all liens arising out of any such work;
  - (2) to obtain, maintain and pay for such insurance policies or bonds, whether or not required by Section 5.04, as the Association may deem appropriate for the protection or benefit of the Community

- Area, the Association, the members of the Board of Directors, the members of the AAB, or the Owners, including without limitation, war risk insurance, builders risk insurance, workmen's compensation insurance, malicious mischief insurance and performance and fidelity bonds;
- (3) to contract and pay for, or otherwise provide for utility services including without limitation, water, sewer, garbage, electrical, telephone and gas as may be required to serve the Common Areas from time to time;
  - (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 other security or protection services as the Association shall deem necessary for the benefit of property in the Community Area and the Owners thereof;
  - (6) to contract and pay for, or otherwise provide such materials, supplies, furniture, equipment and labor as the Association deems necessary for the landscaping, maintenance, repair, operation and management of the Common Areas and to pay and discharge any and all liens placed or imposed upon any Common Areas 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 management.
- (C) The Association may grant and convey to any third parties for reasonable compensation and on such terms as the Board may approve, easements, rights-of-way, parcels or strips of land in, on, over or under any Common Area, for the purpose of:
- (1) constructing and maintaining 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, heating, power, telephone, television and other purposes, and all necessarily related facilities;
  - (3) constructing, operating and maintaining public and private sewers, storm drains, land drains and water systems and sprinkler systems and water and gas lines or pipes and necessarily related facilities.
- (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 this Declaration; provided, however, that the Association may not delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$1,000.00 or for the performance of any work or services, which work or services are not to be completed within sixty (60) days, or the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.
- (E) The Association shall have the authority to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Areas 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 acquire and accept title to any property, whether real, personal or mixed, to be used for the purposes of the Association in the discharge of its duties and obligations or the exercise of its powers and authority; provided that nothing therein shall be construed as authorizing the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom or as authorizing the Association to carry on any business, trade, association or profession for profit; provided, further, that nothing herein shall be deemed to prevent the Association from charging reasonable user or membership fees for the use of recreational facilities now or hereafter located on the Common Areas, so long as said fees are used solely to defray the costs of construction, maintenance, repair, operation or management of such facilities.

- (G) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose of, any portion or portions of the Common Areas, together with any improvements thereon, or any other property of the Association, provided that the retention of such property is no longer necessary, advantageous or beneficial to the Association or to the Owners, and the Association may from time to time borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V, and may secure the repayment of same by a mortgage of the Common Areas 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 members entitled to not less than two-thirds (2/3rds) of the total number of votes eligible to be cast by members who are present or represented by proxy at a meeting of the Association 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; provided, further, that the requirement of approval as aforesaid shall not apply to borrowings of less than \$10,000.00 which the Board deems necessary or advisable to meet unforeseen, unexpected or current expenses and obligations of the Association for which there are insufficient operating funds or reserves. All proceeds of any disposition or borrowings, 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 improving the properties of the Association or in meeting the expenses and obligations of the Association.

Section 5.06. Waialae Iki V Association Rules.

- (A) The Association may from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations known as the Waialae Iki V Association Rules (hereafter referred to as the "Association Rules") which shall govern and regulate activities and conditions in the Community Area.
- (B) A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, which has been certified by the Secretary or an 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 upon his acquisition of a lot. A copy of each new rule or of any amendment of an existing rule and notice of repeal of any rule shall likewise be given 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 these Community Area Restrictions. 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.
- (C) If there is any conflict between any provision of the Association Rules and the provisions of these Community Area Restrictions, the provisions of these Community Area Restrictions shall control.

Section 5.07. Liability Of Members of the Board. No member of the Board of Directors of the Association shall be personally liable to any Owner, guests, lessee or to any other persons, including the Declarant, for any error or omission of the Association, its representatives and employees, the AAB or the manager, provided that such member has acted in good faith upon actual knowledge possessed by him.

**ARTICLE VI**  
**FUNDS AND ASSESSMENTS**

Section 6.01. Operating Fund. The Association shall maintain an operating fund into which shall be deposited all monies received by the Association, whether from maintenance assessments, special assessments, user or membership fees, fines, income attributable to the fund itself or any other rents, charges or fees levied by the Association. Said fund

shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations in the exercise of its rights and powers under this Declaration and the Charter and By-Laws of the Association.

Section 6.02. Maintenance Assessments.

- (A) Within thirty (30) days prior to commencement of each fiscal year, the Board of Directors of the Association shall prepare an estimate of the costs and expenses to be incurred by the Association during such fiscal year in performing its functions, duties and obligations (including a reasonable provision for repair, reconstruction, alteration, modification or improvement of existing recreational facilities but excluding any projected costs and expenses of substantial new recreational facilities) and in paying all fees and expenses of the AAB and shall also make an estimate of sufficient reserves for contingencies and replacements. From said estimates, the Board shall subtract:
- (1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating funds at the start of such fiscal year which is attributable to maintenance assessments in the preceding fiscal year; and
  - (2) the estimated receipts for all user or membership fees to be collected by the Association or anticipated rents from the leasing or renting of recreational or other facilities during the forthcoming fiscal year.

The sum thus derived shall constitute the basis for determining maintenance assessments in each fiscal year.

- (B) In order to determine the individual maintenance assessments to be assessed in each fiscal year, the total assessment basis as calculated shall be divided by the total number of Lots in the Community Area.
- (C) If at any time during any fiscal year, the maintenance assessment proves inadequate for any reason, including the inability to collect any Owners' 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 subsection (B) above.
- (D) Maintenance assessments shall be due and payable by the Owners to the Association in equal quarterly installments on or before the first day of each January, April, July and October, or in such other manner as the Association shall designate.

Section 6.03 Special Assessments. The Board shall levy a special assessment (which may include a fine) upon any Owner for any acts or failure or refusal to act or to otherwise comply with this Declaration, the Association Rules or the AAB Rules by such Owner, or such Owner's family member, guest, invitee, tenant, or any employee, agent or contractor of any of them, which causes the Association to incur any expense which would not normally have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the extraordinary expense incurred and shall be due and payable to the Association when levied. Such extraordinary expenses shall be deemed to include without limitation, engineers', architects', attorneys' and accountants' fees when reasonably incurred by the Association.

Section 6.04. Exemptions. With respect to any land in the Community Area owned by it, the Association shall be wholly exempt from the assessments provided for in this Article VI.

Section 6.05. Default in Payment of Assessments.

- (A) Each assessment under this Article VI shall be a separate and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, shall be deemed to have covenanted and agreed to pay the same to the Association. If the Owner fails to 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 interest thereon at twelve percent (12%) per annum, together with all costs of collection, including reasonable attorneys' fees, shall automatically be a lien upon any and each Lot or Lots owned by the Owner. Such lien shall be subject and subordinate to the lien of any mortgage upon the Lot or Lots of such Owner, and the sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer of conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to the payments of assessments which become due prior to such sale, transfer or conveyance;

provided that a transfer in lieu of foreclosure of any mortgage which attaches more than sixty (60) days after recordation of the amendment adopting this proviso, shall not extinguish such lien; and provided, further, that no such sale, transfer or conveyance shall relieve such Lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. Such lien may be foreclosed by suit by the Association in the manner of foreclosure of a mortgage of real property, and the Association shall have the 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 or in equity available to the Association.

- (B) Upon request, the Association shall issue a certificate stating the amount of indebtedness secured by a lien upon any Lot or Lots. Such certificate shall be binding conclusively upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness existing on the certificate. Any Owner may request that such a certificate be issued and may obtain a copy thereof for a reasonable fee charged by the Association as determined by the Board of Directors from time to time.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

#### **Section 7.01. Subdivision and Consolidation.**

- (A) No two or more Lots within the Community Area may be consolidated by any Owner until an application, including a map of the proposed consolidation has been submitted to the AAB, together with a reasonable fee established by the AAB, and the AAB has approved the same. The AAB shall review the application to determine whether or not the consolidation conforms to the basic intent and purposes of this Declaration and to determine whether or not any Owner or Owners of lots within the Community Area will be prejudiced as a result of the proposed consolidation. The AAB shall approve or disapprove the application within thirty (30) days after submission of same, and in the event of disapproval, the AAB shall give a written explanation of the reasons for disapproval to the Owner. Failure to disapprove within said period of thirty (30) days shall be deemed approval of the application. If a proposed consolidation is approved, the AAB shall furnish to the Owner upon his request a statement executed by one of the members of the AAB stating that the map submitted with the application for consolidation has been approved.
- (B) No Lot within the Community Area may be subdivided by the Owner unless said subdivision is a resubdivision of a prior consolidation of Lots approved by the AAB or unless said subdivision is a resubdivision requested in connection with a proposed consolidation for which AAB approval is being sought. In either case, the Owner must first obtain AAB approval in the manner set forth in subsection (A) above.
- (C) Nothing contained in this Section 7.01 shall apply to the subdivision of any Lot owned by the Declarant or the consolidation of two or more Lots into one or more Lots by the Declarant.

#### **Section 7.02. Conveyance of Common Areas; Reservation of Easements and Rights-of -Way and Classification of Land Area; Sewer and Water Systems.**

- (A) The Association shall accept all of the real property and interests in real property conveyed to it as common areas by the Declarant or either of the parties collectively referred to as the Declarant, provided that the Association need not accept any such property in fee subject to any exceptions, liens and encumbrances except as follows:
  - (1) the lien of any non-delinquent real property taxes and assessments;
  - (2) such easements and rights-of-way as may be reserved to the Declarant or granted to any Owner in accordance with the provisions of this Declaration;
  - (3) such easements and rights-of-way as may be reserved to the Declarant for access to real property contiguous to the Common Areas, and such easements and rights-of-way as may be reserved to the Declarant or granted to or for the benefit of the United States of America, the State of Hawaii, the

City and County of Honolulu or any other political subdivision or public organization, any public utility corporation, or any Lot for the purpose of constructing, erecting, operating and maintaining: (a) roads, streets, driveways, walks, parkways and park area; (b) poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for all necessarily related facilities and equipment; and (c) public or private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, water sprinkler systems, water heating and gas lines or pipes, and any and all equipment used in connection therewith;

- (4) the obligations imposed directly or indirectly by any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the City and County of Honolulu or any other political or governmental organization having jurisdiction over such property;
  - (5) the rights reserved to the Declarant pursuant to subsection 7.02(C);
  - (6) easements for roads, pipelines, ditches, telephone, gas and electric lines and any other utilities in favor of public utilities, governmental agencies or private corporations or individuals; and
  - (7) any other lien, encumbrance or defect in title of whatsoever kind and nature (other than of a kind which constitutes a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice the Owners in their use and enjoyment of such property.
- (B) Any property within the Community Area which is not a Common Area may be changed to a common area by the transfer of such property to the Association by all persons having any right, title or interest therein, provided said property is accepted by the Association as authorized by the affirmative vote of members entitled to two-thirds (2/3rds) of the total number of votes eligible to be cast by members at a meeting of the Association duly called, the notice of which shall have described the property to be accepted as a Common Area.
- (C) At any time following the conveyance of a Common Area by the Declarant to the Association, the Declarant may construct, reconstruct, refinish, alter or repair any improvement upon, make or create any excavation or fill upon, change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area, if the Declarant shall determine that any such work:
- (1) is reasonably necessary for the installation of utilities serving any property within the Community Area;
  - (2) is reasonably necessary for the construction of any facility to be used by the Owners;
  - (3) is desirable in order to provide or improve access to or enhance the use and enjoyment of such common area; or
  - (4) is desirable to protect, support or preserve any property which constitutes a part of the Community Area.

Section 7.03. Condemnation of Common Areas. If at any time all or any portion of the Common Areas or any interest therein is taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award, and no Owner shall be entitled to participate as a party in any proceedings relating to such condemnation, such right of participation being reserved exclusively to the Association, which shall in its name alone represent the interest of all Owners.

Section 7.04. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association, and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 7.05. Obligations of Owners, Avoidance, Termination.

- (A) No Owner through non-use of any Common Area, including any recreational facility, or by abandonment of his Lot may avoid the burdens or obligations imposed on him by or pursuant to these Community Area Restrictions.
- (B) Upon the conveyance, sale, assignment or other transfer of lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot and payable after the date of such transfer, and no person after the termination of his status as an Owner and prior to his again becoming an

Owner shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration following the date of such termination.

Section 7.06. Notices, Documents, Delivery.

- (A) Delivery of any notice or other document as permitted or required by these Community Area Restrictions may be accomplished either by delivery in person or by mail. If delivery is made by mail, delivery upon the Association shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the Waialae Iki V Community Area Association at the address designated from time to time by written notice to the Owners, and delivery upon the AAB shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been mailed as aforesaid addressed to the AAB in care of the Waialae Iki V Community Area Association at the latter's then designated address. The post office address of an Owner shall be the street address in Waialae Iki V of such Owner, and delivery by mail to an Owner shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.
- (B) Delivery to any member of the Board of Directors of the Association shall be deemed adequate delivery to the Association, and delivery to any member of the AAB shall be deemed adequate delivery to the AAB.
- (C) Where there is more than one Owner of a Lot, the delivery personally or by mail to any one of the Owners shall constitute effective delivery to all Owners of such Lot.
- (D) The address of the Declarant may be changed by notice in writing delivered to the Association, and the address of the Association may be changed by notice in writing delivered to all Owners.

Section 7.07. Amendment or Repeal.

- (A) In addition to the rights reserved to the Declarant pursuant to Section 2.04 to supplement these Community Area Restrictions with respect to property added to the Community Area, these Community Area Restrictions, or any part hereof, may be amended or repealed in the following manner:
  - (1) by affirmative vote of Owners entitled to not less than three fourths (3/4ths) of the total number of votes eligible to be cast by the Owners, the Owners approve the proposed amendment or amendments or the repeal of any portion or portions of these Community Area Restrictions at a meeting duly called, the notice of which meeting shall have stated as a purpose the consideration of such amendment or repeal and shall have stated the substance of the property amendments or indicated the provisions to be repealed, as the case may be; and
  - (2) a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to those Community Area Restrictions 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 shall be recorded; or
  - (3) a written instrument also setting forth in full said amendment or amendments to these Community Area Restrictions, including any portion or portions thereof repealed, executed by Owners entitled to vote not less than three-fourths (3/4ths) of the total number of votes eligible to be cast by the Owners shall be recorded.
- (B) All of the limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect in perpetuity with respect to all property included within the Community Area, to the Owners and to the Association, subject to amendment and repeal as provided in subsection (A) above.

Section 7.08. Enforcement; Non-Waiver.

- (A) Except as otherwise expressly provided herein, the Association shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by or pursuant to this Declaration, the Association Rules or the AAB Rules upon the Owner or any other person or upon any property within the Community Area; and the cost of enforcement,

including court costs and attorneys' fees, shall be paid by the Owner for any such violation by such Owner or such Owner's family member, guest, invitee, tenant, or any employee, agent or contractor of any of them. Entry upon the Lot of any Owner or other action to enforce any such limitation, restriction, covenant, condition, obligation, lien or charge may be made or taken only after reasonable efforts to give notice and demand to the Owner concerned to cure or rectify the default or breach involved, provided that in the event of emergency, or of a nuisance of a pervasive or intrusive nature which materially affects the tranquility, peace or quiet enjoyment of the occupant of any other Lot, or of continuing damage or risk or threat of damage to property, then only efforts which are reasonable in the circumstances need be exerted to provide oral notice and demand for abatement or correction, prior to such entry and abatement or corrective actions.

- (B) Nothing contained in this Declaration shall be deemed to restrain or abridge the right of any Owner to seek abatement of any nuisance created or caused by any other Owner or to seek enforcement of the provisions hereof against any other Owner or the Association by proper legal proceedings brought in a court of competent jurisdiction.
- (C) Every act or omission which results in the violation of any restriction, condition or covenant of any Association Rule or AAB Rule shall constitute a violation of this Declaration, and any violation of this Declaration, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in subsections (A) and (B) above; provided, however, that only 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.
- (D) The remedies provided for in this Declaration are cumulative and non-exclusive.
- (E) The failure in any case to enforce any limitation, restriction, covenant, condition, obligation, lien or charge now or hereafter imposed by or pursuant to this Declaration shall not constitute a waiver of any right to enforce the same in another case against or with respect to the same Owner or Lot to any other Owner or Lot.

Section 7.09. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

- (A) All of the limitations, restrictions, covenants and conditions of these Community Area Restrictions shall be liberally construed to promote and effectuate the fundamental concept and purpose of Waialae Iki V as set forth in the introductory paragraphs of this Declaration.
- (B) No provision of these Community Area Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Waialae Iki V or any part thereof. Anything in these Community Area Restrictions to the contrary notwithstanding, if all uses to which a lot may be put under the provisions hereof are illegal under the applicable zoning ordinances or statutes, said lot shall remain subject to all other provisions of these Community Area Restrictions which lawfully apply to the lot.
- (C) Notwithstanding the provisions of subsection (A) above, the limitations, restrictions, covenants and conditions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitation, restriction, covenant or condition shall not affect the validity or enforceability of any other provision.
- (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 include the masculine, feminine or neuter as the context requires.
- (E) All titles used in this Declaration, including those of Articles and Sections are intended solely for convenience of reference, and the same shall not, nor shall any of them, affect that which is set forth in such Articles and Sections, nor any of the terms or provisions of these Community Area Restrictions.

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

GENTRY VENTURES

By /s/ Thomas Henry Gentry  
THOMAS HENRY GENTRY

By GENTRY PACIFIC, LTD.

By /s/ Thomas Henry Gentry  
Its Chairman of the Board and  
Chief Executive Officer

Duly authorized and acting General  
Partners of Gentry Ventures

/s/ Thomas Henry Gentry  
THOMAS HENRY GENTRY

Declarant

EXHIBIT "A"

WAIALAE-IKI UNIT V

Land situated on the north boundaries of  
Waialae-Iki View Lots - Unit IV (File Plan 1405)

At Waialae-Iki, Honolulu, Oahu, Hawaii

Owner: Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased  
Address: 567 South King Street, Honolulu, Hawaii

Being a Portion of Royal Patent 3578,  
Land Commission Award 10,613, Apana 3 to A. Paki

SUBDIVIDED INTO LOTS 1 TO 150, INCLUSIVE, AND  
DESIGNATION OF EASEMENTS EI TO E-19, INCLUSIVE,  
W-1, D-1 TO D-8, INCLUSIVE, FI TO F-22, INCLUSIVE,  
AND 5-1 TO 5-25, INCLUSIVE

Beginning at a pipe on the southeasterly corner of this parcel of land, being also the northeasterly corner of Lot 98 of Waialae-Iki View Lots - Unit IV (File Plan 1405), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAHI" being 10,330.33 feet North and 16,518.48 feet East, thence running by azimuths measured clockwise from True South:

1.	76°	46'	158.00	feet along Lot 98 of Waialae-Iki View Lots - Unit IV (File Plan 1405) to a pipe;
2.	97°	35'	360.40	feet along Lots 97, 96 and 95 of Waialae-Iki View Lots - Unit IV (File Plan 1405) to a pipe;
3.	88°	15'	83.97	feet along Lot 93 of Waialae-Iki View Lots - Unit IV (File Plan 1405) to a pipe;
4.	122°	35'	56.00	feet along Lot 129 (Laukahi Street) of Waialae-Iki View Lots - Unit IV (File Plan 1405) to a pipe;
5.	155°	25'	215.30	feet along Lot 61 of Waialae-Iki View Lots - Unit IV (File Plan 1405) and the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
6.	202°	44'	92.50	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
7.	199°	45'	95.99	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
8.	198°	45'	110.81	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
9.	195°	22'	87.12	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
10.	191°	54'	68.04	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

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11.	270°	30'	145.03	feet along Reservoir Site to a pipe;
12.	Thence along Reservoir Site, on a curve to the right with a radius of 1,078.00 feet, the chord azimuth and distance being:			
	184	32' 11"	173.42	feet
	to a pipe;			
13.	189°	09'	15.00	feet along Reservoir Site to a pipe;
14.	99°	09'	141.01	feet along Reservoir Site to an iron pin;
15.	172°	28'	88.75	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
16.	160°	16'	112.60	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
17.	152°	00'	97.99	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
18.	259°	43'	141.51	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki. to an iron pin;
19.	178°	34'	113.79	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
20.	191°	00'	69.81	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
21.	191°	27'	102.25	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
22.	198°	13'	79.03	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
23.	150°	16'	117.71	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
24.	97°	20'	226.43	feet along the remainder of R.P. 3578, L. C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
25.	77°	10'	127.84	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
26.	187°	20'	703.00	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
27.	191°	20'	345.91	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
28.	196°	20'	234.14	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
29.	201°	54'	82.47	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
30.	286°	20'	186.00	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
31.	16°	20'	202.00	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

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32. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  
 331°            20'            28.28 feet  
 to an iron pin;
33. 286°        20'            43.20            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
34. Thence along the remainder of R.P. 3578, L. C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the right with a radius of 222.00 feet, the chord azimuth and distance being:  
 312°            40'            196.96 feet  
 to an iron Pin;
35. 339°        00'            113.43            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
36. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  
 294°            00'            28.28 feet  
 to an iron pin;
37. 339°        00'            44.00            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
38. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  
 24°            00'            28.28 feet  
 to an iron pin;
39. 339°        00'            27.90            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
40. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 378.00 feet, the chord azimuth and distance being:  
 315°            00'            307.49 feet  
 to an iron pin;
41. 291°        00'            81.08            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;
42. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  
 243°            23' 30"            29.54 feet  
 to an iron pin;
43. 284°        01' 18"            67.33            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

44. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A Paki, on a curve to the right with a radius of 428.00 feet, the chord azimuth and distance being:

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140°            49' 16"            94 feet  
to an iron pin;

45. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

333°            18' 37"            26.93 feet  
to an iron pin;

46.            21°            00'            44.00            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

47. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

68°            41' 23"            26.93 feet  
to an iron pin;

48. Thence along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki, on a curve to the right with a radius of 428.00 feet, the chord azimuth and distance being:

30°            36' 23"            63.09 feet  
to an iron pin;

49.            34°            50'            68.00            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

50.            304°          50'            115.51          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

51.            33°            30'            147.04          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

52.            359°          00'            175.01          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

53.            14°            19'            65.26            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

54.            10°            36'            351.78          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

55.            8°            03'            528.25          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

56.            353°          39'            540.10          feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to an iron pin;

57.            346°          46'            74.90            feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki to the point of beginning and containing an Area of 40.221 Acres.

AND DESIGNATION of the following easements:

- Easement E-1    for electrical purposes affecting Lot 4
- Easement E-2    for electrical purposes affecting Lot 7

Easement E-3 for electrical purposes affecting Lot 12  
Easement E-4 for electrical purposes affecting Lot 15  
Easement E-5 for electrical purposes affecting Lot 17  
Easement E-6 for electrical purposes affecting Lot 22

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Easement E-7 for electrical purposes affecting Lot 35  
Easement E-8 for electrical purposes affecting Lot 41  
Easement E-9 for electrical purposes affecting Lot 45  
Easement E-10 for electrical purposes affecting Lot 52  
Easement E-11 for electrical purposes affecting Lot 64  
Easement E-12 for electrical purposes affecting Lot 74  
Easement E-13 for electrical purposes affecting Lot 78  
Easement E-14 for electrical purposes affecting Lot 88  
Easement E-15 for electrical purposes affecting Lot 100  
Easement E-16 for electrical purposes affecting Lot 108  
Easement E-17 for electrical purposes affecting Lot 118  
Easement E-18 for electrical purposes affecting Lot 128  
Easement E-19 for electrical purposes affecting Lot 9  
Easement W-1 for water purposes affecting Lot 121  
Easement D-1 for drainage ditch purposes affecting Lots 31 to 45, inclusive  
Easement D-2 for drainage purposes affecting Lots 54 and 81  
Easement D-3 for drainage purposes affecting Lot 57  
Easement D-4 for drainage ditch purposes affecting Lots 55, 56 and 57  
Easement D-5 for drainage purposes affecting Lot 100  
Easement D-6 for drainage purposes affecting Lot 111  
Easement D-7 for drainage purposes affecting Lot 120  
Easement D-8 for drainage purposes affecting Lot 130  
Easement F-1 for flowage purposes affecting Lot 2  
Easement F-2 for flowage purposes affecting Lots 23, 24, and 25  
Easement F-3 for flowage purposes affecting Lot 30  
Easement F-4 for flowage purposes affecting Lot 52  
Easement F-5 for flowage purposes affecting Lot 54  
Easement F-6 for flowage purposes affecting Lot 55  
Easement F-7 for flowage purposes affecting Lots 60 and 61  
Easement F-8 for flowage purposes affecting Lot 62  
Easement F-9 for flowage purposes affecting Lot 68  
Easement F-10 for flowage purposes affecting Lot 70  
Easement F-11 for flowage purposes affecting Lot 73  
Easement F-12 for flowage purposes affecting Lot 86  
Easement F-13 for flowage purposes affecting Lot 88  
Easement F-14 for flowage purposes affecting Lots 94 and 96  
Easement F-15 for flowage purposes affecting Lot 99  
Easement F-16 for flowage purposes affecting Lots 105, 106 and 107  
Easement F-17 for flowage purposes affecting Lot 108  
Easement F-18 for flowage purposes affecting Lot 112  
Easement F-19 for flowage purposes affecting Lots 115, 116 and 117  
Easement F-20 for flowage purposes affecting Lot 122  
Easement F-21 for flowage purposes affecting Lots 125 and 127  
Easement F-22 for flowage purposes affecting Lots 132, 133 and 134  
Easement S-1 for sewer purposes affecting Lots 1, 2, 6, 7, 8 and 10  
Easement S-2 for sewer purposes affecting Lot 2

- Easement S-3 for sewer purposes affecting Lots 4, 5 and 6
- Easement S-4 for sewer purposes affecting Lots 11, 13 and 14
- Easement S-5 for sewer purposes affecting Lot 13

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- Easement S-6 for sewer purposes affecting Lot 19
- Easement S-7 for sewer purposes affecting Lots 21, 23 to 29, inclusive
- Easement S-8 for sewer purposes affecting Lots 55 and 80
- Easement S-9 for sewer purposes affecting Lot 60
- Easement S-10 for sewer purposes affecting Lots 70, 71, and 72
- Easement S-11 for sewer purposes affecting Lots 75, 76, 78 and 79
- Easement S-12 for sewer purposes affecting Lots 82 and 89
- Easement S-13 for sewer purposes affecting Lot 93
- Easement S-14 for sewer purposes affecting Lots 96, 97 and 98
- Easement S-15 for sewer purposes affecting Lot 102
- Easement S-16 for sewer purposes affecting Lots 104, 105, 106 and 107
- Easement S-17 for sewer purposes affecting Lot 112
- Easement S-18 for sewer purposes affecting Lot 113
- Easement S-19 for sewer purposes affecting Lots 115, 116 and 117
- Easement S-20 for sewer purposes affecting Lot 122
- Easement S-21 for sewer purposes affecting Lot 123
- Easement S-22 for sewer purposes affecting Lot 125
- Easement S-23 for sewer purposes affecting Lot 133
- Easement S-24 for sewer purposes affecting Lots 132, 133 and 134
- Easement S-25 for sewer purposes affecting Lots 90 to 94, inclusive, 99 to 102, inclusive, 109 to 112, inclusive, 119 to 122, inclusive, 129 to 132, inclusive, and 136.

Subject, however, to the following easements:

- Easement S-17 (10 feet wide) for sewer purposes in favor of the City and County of Honolulu affecting Lot 1
- Easement S-18 (10 feet wide) for sewer purposes in favor of the City and County of Honolulu affecting Lot 136
- Easement S-19 (10 feet wide) for sewer purposes in favor of the City and County of Honolulu affecting Lot 136

This description is from an actual survey on the ground made by or under the direct supervision of the undersigned between November 9, 1977 and July 16, 1980 and may be checked by the State Surveyor with my Calculation Folder No. 721.

END OF EXHIBIT "A"

EXHIBIT "B"

Waialae-Iki View Lots - Unit V  
Phase II  
(Includes Lot 201-0-1 of Land Court Application 656)

Portion of R. P. 3578, L. C. Aw. 10,613, Ap. 3 to A. Paki Waialae-Iki, Honolulu, Oahu, Hawaii

Beginning at the Southwest corner of this parcel of land on the East boundary of Lot 94 of Waialae-Iki View Lots, Unit V, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Leahi" being 11,808.85 feet North and 16,580.28 feet East, and running thence by azimuths measured clockwise from true South:

1.	194°	19' 00"	65.26	feet along Waialae-Iki View Lots Unit V, Phase I;
2.	179°	00' 00"	174.99	feet along same;
3.	213°	30' 00"	147.04	feet along same;
4.	124°	50' 00"	115.51	feet along same;
5.	213°	50' 00"	68.00	feet along same;
				Thence on a curve to the left with a radius of 428.00 feet along same, the chord azimuth and distance being
6.	210°	36' 23"	63.09	feet;
				Thence on a curve to the right with a radius of 20.00 feet along same, the chord azimuth and distance being
7.	248°	41' 23"	26.93	feet;
8.	201°	00' 00"	44.00	feet along Waialae-Iki View Lots - Unit V, Phase I;
				Thence on a curve to the right with a radius of 20.00 feet along same, the chord azimuth and distance being
9.	153°	18' 37"	26.93	feet;
				Thence on a curve to the left with a radius of 428.00 feet along same, the chord azimuth and distance being
10.	194°	49' 16"	11.94	feet;
11.	104°	01' 18"	67.33 feet	along Waialae-Iki View Lots - Unit V, Phase I;
				Thence on a curve to the right with a radius of 20.00 feet along same, the chord azimuth and distance being
12.	63°	23' 30"	29.54	feet;
13.	111°	00' 00"	81.08	feet along Waialae-Iki View Lots - Unit V, Phase I;
				Thence on a curve to the right with a radius of 378.00 feet along same, the chord azimuth and distance being
14.	135°	00' 00"	307.49	feet;
15.	159°	00' 00"	27.90	feet along Waialae-Iki View Lots - Unit V, Phase I;
				Thence on a curve to the right a radius of 20.00 feet along same, the chord azimuth and distance being

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16.	204°	00' 00"	28.28	feet;
17.	159°	00' 00"	44.00	feet along Waialae-Iki View Lots - Unit V, Phase I; Thence on a curve to the right with a radius of 20.00 feet along same, the chord azimuth and distance being
18.	114°	00' 00"	28.28	feet;
19.	159°	00' 00"	113.43	feet along Waialae-Iki View Lots - Unit V, Phase I; Thence on a curve to the left with a radius of 222.00 feet along same, the chord azimuth and distance being
20.	132°	40' 00"	196.96	feet;
21.	106°	20' 00"	43.20	feet along Waialae-Iki View Lots - Unit V, Phase I; Thence on a curve to the right with a radius of 20.00 feet along same, the chord azimuth and distance being
22.	151°	20' 00"	28.28	feet;
23.	196°	20' 00"	202.00	feet along Waialae-Iki View Lots - Unit V, Phase I;
24.	106°	20' 00"	186.00	feet along same;
25.	201°	54' 00"	87.53	feet along the remainder of R.P. 3578, L.C. Aw. 10,613, Ap. 3 to A. Paki;
26.	210°	55' 00"	235.50	feet along same;
27.	205°	27' 00"	295.70	feet along same;
28.	198°	07' 00"	118.90	feet along same;
29.	192°	58' 00"	88.30	feet along same;
30.	201°	23' 00"	56.50	feet along same;
31.	222°	40' 00"	83.50	feet along same;
32.	242°	23' 00"	120.80	feet along same;
33.	248°	37' 00"	48.00	feet along same;
34.	261°	50' 00"	465.09	feet along same; Thence along Wiliwilinui Ridge, along Lot 201-B-2 of Land Court Application 656, the direct azimuth and distance being
35.	347°	41' 00"	281.15	feet;
36.	274°	58' 10"	399.96	feet along Lot 201-B-2 of Land Court Application 656;
37.	356°	23' 40"	194.36	feet along Lot 1222 of Land Court Application 656;
38.	30°	45' 40"	653.90	feet along Lot 1463-A-1 of Land Court Application 656;
39.	327°	38' 40"	284.70	feet along same;
40.	3°	04' 40"	258.20	feet along same;
41.	353°	20' 40"	204.90	feet along same;
42.	342°	49' 40"	140.10	feet along same;

EXHIBIT "B"

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43.	327°	31' 40"	282.70	feet along same;
44.	359°	35' 40"	273.00	feet along same;
45.	60°	01' 40"	571.97	feet along Lots 1463-A-1 and 1463-A-2 of Land Court Application 656 the point or beginning and containing an area of 58.145 acres.

Subject, however, to the reservation of all mineral and metallic mines in favor of the State of Hawaii.

BEING the same premises described in and covered by Transfer Certificate of Title No. 228,335

END OF EXHIBIT "B"

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[Insert Exhibit "C" Rec Center map here]

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[Insert "Petition for Charter of Incorporation" here]

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IN THE DEPARTMENT OF REGULATORY AGENCIES  
STATE OF HAWAII

In the Matter of the Petition )  
 )  
 of )  
 )  
 WAIALAE IKI V COMMUNITY )  
 ASSOCIATION )  
 )  
 for a Charter of Incorporation )  
 \_\_\_\_\_ )

**CHARTER OF INCORPORATION**

(as amended by Articles of Amendment filed with  
the Department of Commerce and Consumer Affairs of  
the State of Hawaii on July 26, 1991)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, the undersigned Director of Regulatory Agencies of the State of Hawaii, send Greeting:

WHEREAS, THOMAS H. GENTRY, REEVES L. SHAW and NORMAN H. DYER, all of whom are residents of the State of Hawaii, have filed with me as Director of Regulatory Agencies a verified petition to grant to them and their associates a charter of incorporation as a non-profit corporation in accordance with the provisions of Section 416-20, Hawaii Revised Statutes;

NOW, THEREFORE, KNOW YE, that I, the said Director, in the exercise and execution of every power and authority in anywise enabling me in this behalf, do hereby constitute the said petitioners and their associates a corporation under the laws of the State of Hawaii for the purposes and in the form hereinafter set forth.

**I  
NAME**

The name of the corporation shall be WAIALAE IKI V COMMUNITY ASSOCIATION.

**II  
LOCATION**

The location of the corporation shall be in the County of Honolulu, State of Hawaii, and the address of its initial office shall be Suite 2797, 733 Bishop Street, Honolulu, Hawaii.

**III  
PURPOSE**

This corporation does not contemplate pecuniary gain or profit to the members thereof, and the specific and exclusive purposes for which it is formed are to provide for the management, maintenance, protection, preservation, architectural control, planned development and mutually compatible use of the property described in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Community Area") and all additions thereto, and to promote the health, safety and welfare of its members, all in a manner consistent with this Charter, the By-Laws hereinafter mentioned and the Waialae Iki V Community Area Declaration of Covenants, Conditions and Restrictions recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15106, at Page 105, as the same may be amended from time to time, (hereinafter called the "Community Area Restrictions").

#### IV POWERS

In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to chartered non-profit corporations, the corporation shall have succession by its corporate name in perpetuity and shall have the power:

(a) To provide, own, acquire, lease, plan, design, develop, construct, reconstruct, maintain, restore, repair manage and administer as the case requires, utility facilities and services, recreational areas and facilities, park and landscape areas, common areas and such other improvements, facilities and services in or upon the common areas of the Community Area, all as provided for in the Community Area Restrictions.

(b) To obtain, maintain and pay for all such insurance policies or bonds deemed appropriate for the protection and benefit of the Community Area as provided for in the Community Area Restrictions.

(c) To pay all expenses incident to the conduct of the business of the corporation.

(d) To enforce by any lawful means any and all covenants, conditions, limitations, restrictions and agreements applicable to the Community Area under and pursuant to the Community Area Restrictions including such or otherwise.

(e) Insofar as permitted by law, and in accordance with the Community Area Restrictions, to do any other thing that will promote the common benefit and enjoyment of the Owners of lots and/or dwelling units in the Community Area including the adoption and publication of rules and regulations governing the use of common areas, improvements and facilities in the Community Area and the personal conduct of any person thereon and the establishment of penalties for infractions thereof.

(f) In connection with the exercise of any powers conferred upon the corporation, to levy regular assessments upon its members in accordance with the Community Area Restrictions, which assessments shall constitute liens upon the lands assessed subject to the enforcement provisions hereinafter provided.

(g) In order to defray extraordinary expenses incurred by the corporation as a result of the failure or refusal of any members to abide by or otherwise comply with the Community Area Restrictions, the Architectural Advisory Board Rules or the Association Rules hereinafter mentioned or to enforce compliance with same, to levy special assessments and fines against such members, which assessments and fines shall constitute liens upon the lands assessed, subject to the enforcement provisions hereinafter provided, and the rights to which liens may be pledged, hypothecated or transferred as may be required.

(h) To collect and enforce payment by any lawful means, of all charges and assessments and fines provided for herein or in the Community Area Restrictions or the By-Laws, including the sale of land subject to any assessment lien at public or private sale on such reasonable terms and conditions as the directors of this corporation shall determine, the proceeds of any such sale to be applied first to the payment of the corporation's costs, including legal expenses, of the sale proceedings, next to the payment of the delinquent amount secured by the lien and the balance, if any, to the owners of the land as their interest may appear.

(i) To sue and be sued in any court.

(j) To make and use a common seal and to alter the same at its pleasure.

(k) To acquire (by gift, purchase, lease or otherwise), own hold, improve, build upon, operate, maintain, rent, lease, assign, sell, transfer, convey, donate, dedicate for public use or dispose of such property, real, personal and mixed, as the purposes of the corporation shall require or appear to be served, without limit as to amount, and to borrow money, to mortgage, pledge and hypothecate the same to secure any debt of the corporation, subject to the provisions of the Community Area Restrictions.

(l) To draw, make, accept, endorse, assign, discount, execute and issue promissory notes, bills of exchange, bills of lading, drafts, obligations, certificates, stock and other warrants, and other instruments to be assignable, negotiable or transferable by delivery or to order, or otherwise, as the purpose of the corporation shall require.

(m) To enter into and perform contracts, undertakings and obligations of every kind and character consonant with the purposes of the corporation and subject to the limitations hereinabove set forth.

(n) To appoint such subordinate officers and agents as the activities of the corporation may require.

(o) To make By-Laws not inconsistent or in conflict with the law, the Community Area Restrictions or this Charter.

(p) To adopt rules and regulations called "Association Rules" not inconsistent with and subject to the Community Area Restrictions, governing and regulating certain activities within the Community Area, all of the mutual benefit and welfare of the members of the corporation.

(q) And generally to possess and exercise any and all rights, privileges, powers and immunities which are accorded to the corporation under the Community Area Restrictions or which are now or may hereafter be secured by law to chartered non-profit corporations and which are reasonably incidental to the fulfillment of the objects and purposes hereinabove set forth and to the exercise of any powers possessed by or granted to this corporation.

## V MEMBERSHIP

(a) Each and every person, corporation, partnership or other legal entity being the owner of any lot or lots within the Community Area (herein referred to as an "Owner") shall be a member of the Association.

(b) For the purposes of determining membership status in the Association, the term "Owner" of a lot within the Community Area shall be deemed to include:

(1) An owner of any lot within the Community Area Restrictions;

(2) The Declarant of the Community Area Restrictions, so long as the Declarant is the owner of any lot within the Community Area.

(c) No membership shall be terminated or forfeited and no member shall be expelled, except upon transfer of his interest in the Community Area which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale of such interest therein, the vendor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed or assignment of lease in compliance with said agreement of sale or reversioning in the vendor in the event of termination of said agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner, and upon payment of all his indebtedness to the Association on account of unpaid assessment or otherwise, and a transfer charge of not more than FIFTY DOLLARS (\$50.00).

(d) The membership of the Association shall be divided into two (2) classes of membership as follows:

(1) Class A members shall include all owners described in subparagraph (b) (1) above; and

(2) The Class B members shall be the Declarant of the Community Area Restrictions.

(e) The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be exclusively as set forth in the Community Area Restrictions, this Charter and the By-Laws of the Association.

(f) The membership rights of any person may be suspended by action of the Board of Directors during the period when the member shall be in default in the payment of any assessment or charge levied by the corporation; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the directors have adopted and published rules and regulations governing the use of the common areas, improvements and facilities, and the personal conduct of any person thereon, as provided in paragraphs (d) and (e) of Article IV, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days.

## VI VOTING RIGHTS

Members of the Association shall be entitled to vote as follows:

(a) Each Class A member shall be entitled to one (1) vote for each lot owned, as the term "lot" is defined in the Community Area Restrictions; provided that if more than one person or entity owns a given lot, any one of said persons or entities shall be entitled to exercise the one vote attributable to said lot upon the unanimous consent of all co-owners of the lot; and

(b) The Class B member (Declarant) shall be entitled to three (3) votes for each lot owned by it.

## VII OFFICERS; BOARD OF DIRECTORS

(a) The officers of the corporation shall be a President, one or more Vice Presidents as may be determined in accordance with the By-Laws, a Secretary and a Treasurer. The corporation may have such additional officers as may be determined in accordance with the By-Laws from time to time. The Officers shall have the powers, perform the duties and be appointed as may be determined in accordance with the By-Laws. Any person may hold two offices of said corporation if so provided by the By-Laws.

(b) The Board of Directors of the corporation shall consist of not less than three (3) nor more than nine (9) persons. The directors (and alternate directors and/or substitute directors, if any) shall be elected or appointed in the manner provided in the By-Laws of the Corporation and may be removed from office in the manner provided in the By-Laws and all vacancies in the office of director or of any officer shall be filled in the manner provided in the By-Laws; provided, however, that the By-Laws shall specify that the regular election of directors and officers and the filling of vacancies in the office of directors or of any officer shall be accomplished during the annual meetings of the corporation to be held on such day and at such time and place specified pursuant to the By-Laws.

The names and addresses of the initial officers and directors of the corporation are as follows (no less than one-third of the directors are residents of the State of Hawaii):

<u>OFFICE HELD</u>	<u>NAME</u>	<u>RESIDENCE ADDRESS</u>
President	THOMAS H. GENTRY	4545 Kahala Avenue Honolulu, Hawaii
Vice President/ Secretary	REEVES L. SHAW	4340 Pahoia Avenue Honolulu, Hawaii
Vice President/ Treasurer	NORMAN H. DYER	46-251 Ikiiki Kaneohe, Hawaii

(c) The affairs of the corporation shall be conducted by the Board of Directors and all the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors except as otherwise provided by law, this Charter of Incorporation, the By-Laws of the corporation, or the Community Area Restrictions, to and including full power to adopt, alter and amend the By-Laws of the corporation, to determine from time to time the number of directors within the limitations hereinabove stated, and to make and adopt proper rules and regulations for the conduct of the affairs of the corporation.

## VIII IMMUNITY FROM LIABILITY

No director or officer of the corporation shall be liable to the corporation for any loss or damage suffered by it on account of any action or omission by him as such director or officer, unless such director or officer shall, with respect to such action or omission, be or have been guilty of willful misconduct in the performance of his duties as such director or officer.

Each person who is now or hereafter shall be a director or officer of the corporation, and his personal representatives, shall be indemnified by the corporation against all costs and expenses including attorneys' fees and costs, reasonably incurred by or imposed upon him in connection with any action, suit, proceeding, investigation or inquiry to which he may be made a party by reason of his being or having been a director or officer of the corporation (whether or

not he continues to be a director or officer at the time of the incurring or imposition of such costs and expenses) except in relation to matters as to which he shall be finally adjudged in any action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such director or officer. If in any such action, suit or proceeding there is a final adjudication that such director or officer was, or that such director or officer was not guilty of such willful misconduct, the Board of Directors and each director and officer of the corporation may conclusively rely thereon and in the absence of any final adjudication in any such action, suit or proceeding, the Board of Directors and each director and officer of the corporation may conclusively rely upon the opinion of legal counsel selected by or in the manner designated by the Board of Directors.

The immunity from liability and the indemnity provided for in this Article VIII shall be in addition to any rights to which the director or officer of the corporation may be entitled by law, pursuant to vote of the members of the corporation, or otherwise.

## **IX NON-PROFIT ORGANIZATION**

The corporation is organized for charitable and civic purposes only and is not organized for profit, it will not issue any stock, and no part of its assets, income or earnings shall be distributed to its members, directors or officers, except for services actually rendered to the corporation. Any provision of this Charter to the contrary notwithstanding, the corporation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation as set forth in this Charter.

## **X VOLUNTARY DISSOLUTION**

No voluntary dissolution of the corporation or liquidation of its assets shall take place without the affirmative vote of three-fourths (3/4ths) of the members of the corporation present at a meeting of the members of the corporation duly called and held for the purpose of authorizing such dissolution and/or liquidation. Written notice of the meeting setting forth such purposes shall be given to all members not less than thirty (30) days prior to said meeting. Upon dissolution or liquidation, the assets of the corporation, after payment of the corporation's just debts, shall be dedicated to one or more appropriate public agencies or instrumentality's to be devoted to purposes as nearly as practicable the same as those to which the assets were required to be devoted by the corporation. If such dedication is refused acceptance, such assets shall be granted, conveyed or assigned to any one or more non-profit corporations, association, trusts or other organizations then qualifying as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 to be devoted to charitable purposes and uses that would most nearly reflect the purposes and uses to which the assets were required to be devoted by the corporation.

## **XI MERGERS AND CONSOLIDATION**

To the extent permitted by law, the corporation may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of not less than three-fourths (3/4ths) of the members of the corporation.

## **XII LIABILITY**

The property of the corporation shall alone be liable in law for the payment of its debts and discharge of its obligations. Neither the members of the corporation nor the members of the Board of Directors nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that every

member of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as herein provided.

**XIII  
AMENDMENTS**

This Charter for Incorporation may be amended from time to time by vote of not less than two-thirds (2/3rds) of the members of the corporation present at a meeting duly called and held for the purpose. No amendment shall be effective unless and until a certificate setting forth the amendments signed and verified by two authorized corporate officers has been filed in the Office of the Director of Regulatory Agencies of the State of Hawaii and approved by said Director.

**XIV  
SUBJECT TO GENERAL LAWS**

The corporation shall be subject to all general laws now in force or hereafter enacted with regard to non-profit corporations.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Department of Regulatory Agencies of the State of Hawaii at Honolulu, this 28th day of January, 1981.

DIRECTOR OF REGULATORY AGENCIES  
STATE OF HAWAII

By /s/ Russel Nagata  
Corporation & Securities Administrator

**BY-LAWS**  
**OF**  
**WAIALAE IKI V COMMUNITY ASSOCIATION**

**ARTICLE I**

Section 1. Principal Office. The principal office of the corporation shall be at such place in the City and County of Honolulu, State of Hawaii, as the Board of Directors shall from time to time determine.

Section 2. Seal. The corporation shall have a common seal of such form and design as the Board of Directors shall from time to time determine.

**ARTICLE II**

Meetings

Section 3. Annual Meetings. The annual meeting of the members of the corporation shall be held each year within three (3) months following the end of the fiscal year adopted by the corporation at such place in the City and County of Honolulu as shall be designated by the Board of Directors in the notice of annual meeting. The annual meeting shall be a general meeting, and at any such meeting any business within the powers of the corporation, without special notice of such business, may be transacted except as limited by law, the Charter of Incorporation, the Community Area Restrictions, or these By-Laws.

Section 4. Special Meeting. Special meetings of the members may be held at any time upon the call of the President, or upon the call by resolution of the Board of Directors or upon the written request of members entitled to not less than twenty-five percent (25%) of the votes of the entire membership.

Section 5. Notices of Meetings. Except where and to the extent otherwise required by law, the Charter of Incorporation or the Community Area Restrictions, a written notice of all meetings, annual or special, stating the place, day and hour of the meetings, and whether it is annual or special, and in case of each special meeting stating briefly the purpose thereof and the business proposed to be transacted, shall be given by personally delivering the same to a member or by mailing such notice, postage prepaid at least fourteen (14) days before the date assigned for the meeting, to a member at his address as it appears upon the transfer books of the corporation or his usual place of business; or such notice of any meeting may be given by publication in one or more newspapers of general circulation in Honolulu, Hawaii, not less than two (2) times on separate days, the last publication to appear not less than five (5) days prior to the date assigned for the meeting. Upon notice being given in accordance with the provisions hereof, the failure of any stockholder to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings at such meeting. The presence of any member of the corporation at a meeting shall be deemed a waiver by such member of notice of the meeting.

Section 6. Quorum. At all meetings the presence of members entitled to exercise forty percent (40%) of the votes of the membership shall be necessary to constitute a quorum, and the action of the members entitled to a majority of the votes present or represented at any meeting at which a quorum is present shall be valid and binding upon the corporation except as otherwise provided by law the Charter of Incorporation, the Community Area restrictions or these By-Laws.

Section 7. Voting. At each meeting of the members, each member, except where otherwise provided by the Charter of Incorporation, shall be entitled to vote in person or by representative appointed by written proxy subscribed by such member or by his duly authorized attorney, and filed with the Secretary, and he shall have the number of votes to which he is entitled under the Charter of Incorporation upon the date of said meeting or on the record date fixed by the Board of Directors. Proxies solicited by the Board of Directors shall be solicited for only one meeting at a time and shall be valid for only the meeting for which they have been solicited. As individuals, however, members of the corporation

may give or solicit proxies to be effective for one or more meetings, whether annual or special, and such proxies shall be valid and recognizable in accordance with their respective terms.

Section 8. Adjournment. Any meeting of the members whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, and such adjournment may be to such time and to such place as may be determined by a majority vote of those present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting as originally called and noticed.

### ARTICLE III

#### Board of Directors

Section 9. Number and Term of Office. A Board consisting of not less than three (3) nor more nine (9) Directors shall be elected at the annual meeting. Except as hereinafter provided, each Director shall hold office until the third annual meeting held following his election and until his successor shall have been elected. At the first annual meeting, one-third (1/3rd) of the Directors elected shall be elected to three year terms, one-third (1/3rd) of the Directors elected shall be elected to two year terms, and one-third (1/3rd) of the Directors elected shall be elected to one year terms. A determination of the number of Directors who shall serve on the Board of Directors, within the limits set forth above, may be made at any time by a majority decision of the current Directors. If the Board of Directors should decide to increase the number of Directors, within the limits set forth above, the additional number of Directors shall be elected at the next annual meeting of members. If the Board of Directors should decrease the number of Directors, the current Directors shall continue to hold office until the next annual meeting, unless certain of the Directors should earlier resign. Any increase or decrease in the number of Directors shall be accomplished so as to maintain the schedule of retiring and replacing one-third (1/3rd) of the Board of Directors each year.

Section 10. Removal of Directors. Any Director may be removed from office at any time and another person may be elected in his place to serve for the remainder of his term at any special meeting of members, called and held for the purpose, by the affirmative vote of the members entitled to a majority of the total votes of the membership.

Section 11. Chairman, Meetings, Notice. The Board may appoint a Chairman who shall preside at all meetings and serve during the pleasure of the Board. The Board shall hold meetings as often as the business of the corporation may require at the call of the President, Chairman of the Board, or any of the Directors constituting at least one-half (1/2) of the Board, provided that the Board shall meet regularly at least once each quarter with one meeting to follow immediately after the annual meeting of the members of the corporation. The Secretary shall give notice of each meeting of the Board of Directors other than the annual meeting either orally or in writing by mailing or delivering the same not less than one (1) day before the meeting unless otherwise prescribed by the Board. The failure by the Secretary to give such notice or by any Director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of Directors is Present.

Section 12. Quorum and Adjournment. The majority of the Directors shall constitute a quorum for the transaction of business and no actions taken other than the appointment of Directors to fill temporary vacancies, as provided in these By-Laws, shall bind the corporation unless it shall receive the concurring vote of a majority of all the Directors. In the absence of a quorum, the presiding officer or a majority of the Directors present may adjourn the meeting from time to time without further notice until a quorum be had.

Section 13. Powers of Board of Directors. The property, affairs and business of the corporation shall be managed by the Board of Directors and, except as otherwise provided by law, the Charter of Incorporation, the Community Area Restrictions or these By-Laws, all of the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors as fully and for all purposes as though exercised directly by the members; and in furtherance and not in limitation of said general powers, the Board of Directors shall have the power: to authorize the disposition of property; to appoint a General Manager and such other managers, officers or agents of the corporation as in its judgment the business may require and to confer upon and to delegate to them by power of attorney or otherwise such power and authority as it shall determine; to fix the salaries or compensation of agents and employees of the corporation and, in its discretion, to require security of any of them for the faithful performance of any of their duties; to adopt, amend and repeal rules and regulations, not inconsistent with law, the Charter of Incorporation, the Community Area Restrictions or these By-Laws, for the purpose of regulating the use and enjoyment of the common areas, improvements, facilities and

services and the personal conduct of members and their tenants and guests thereon; to establish by the aforementioned rules and regulations penalties for violations of same and/or the Community Area Restrictions and for non-payment of authorized charges and assessments made by the corporation, including the suspension of membership rights as provided in the Charter of Incorporation; to create such committees (including an executive committee or committees) and to designate as members of such committees such persons as it shall determine, and to confer upon such committees such power and authority as may by resolution be set forth for the purpose of carrying on or exercising the Architectural Advisory Board who are to be appointed by the corporation pursuant to the Community Area Restrictions; to create and set aside contingency reserve funds not to exceed twenty-five percent (25%) of the regular operating expenses for the immediately preceding year and to deposit said funds in such depository institution it may deem proper; to remove or suspend any officer and, generally, to do any and every lawful act necessary or proper to carry into effect the powers, purposes and objects of the corporation.

Section 14. Vacancies and Substitute Directors. If any permanent vacancy shall occur in the Board of Directors through death, resignation, removal or other cause, the remaining Directors, by affirmative vote of a majority of the whole Board may elect a successor Director to hold office until the next regular or special meeting of the Association at which time the vacancy shall be filled by election by the members of the Association.

In case of a temporary vacancy, due to the absence of any Director from the State of Hawaii or the sickness or disability of any Director, the remaining Directors, whether constituting a majority or a minority of the whole Board, may appoint some person as a substitute Director who shall be a Director during such absence or disability and until such Director returns to duty. The determination by the Board of Directors of the fact of such absence or disability and the duration thereof, as shown on the minutes of the Board meeting, shall be conclusive as to all persons and the corporation.

Section 15. Compensation. The members of the Board of Directors shall serve without compensation but shall be entitled to be reimbursed for reasonable expenses incurred in attending meetings of the Board not to exceed TEN DOLLARS (\$10.00) for each meeting attended.

Section 16. Approval of Acts of Board of Directors. At any annual or special meeting of the members any or all of the acts and doings of the Board of Directors may be ratified, confirmed and approved by the members, and such ratification and approval shall be as valid and binding upon the corporation and upon all members as though it had been approved or ratified by every member of the corporation.

## ARTICLE IV

### Officers

Section 17. Appointment. The officers of the corporation shall be President, one or more Vice Presidents, a Secretary, a Treasurer and in addition thereto, at the discretion of the Board of Directors, a Chairman of the Board, an Assistant Treasurer or Assistant Treasurers, an Assistant Secretary or Assistant Secretaries, and such other subordinate officers with such duties as the Board of Directors shall from time to time determine. All officers shall be appointed annually by the Board of Directors and shall serve until their successors have been appointed and qualified. One person may hold more than one office, and all officers shall be subject to removal at any time by the affirmative vote of the majority of the entire Board. The Board of Directors may, in its discretion, appoint acting or temporary officers, may appoint officers to fill vacancies occurring for any reason whatsoever, and may, in its discretion, limit or enlarge the duties and powers of any officer appointed by it.

Section 18. Chairman of the Board. The Chairman of the Board, if appointed, shall preside at all meetings of the Board of Directors and shall perform such other duties as may be required of him by the Board of Directors.

Section 19. The President. The President shall preside at all meetings of the members, and in case no Chairman of the Board of Directors is appointed or in the absence of such a Chairman if appointed, he shall preside at meetings of the Board of Directors. He shall exercise general supervision over the business of the corporation and over its several officers, agents and employees, subject, however, to the control of the Board of Directors. He shall also perform Architectural Advisory Board functions when called upon to do so pursuant to the Community Area Restrictions.

Section 20. Vice Presidents. The Vice President or Vice Presidents, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers and rights of the President provided for in these By-Laws or

otherwise during the absence or disability of the President or whenever the office of President is vacant, and shall perform all other duties assigned by the Board of Directors.

Section 21. The Treasurer. The Treasurer shall have custody of all the funds, notes, bonds and other valuable papers of the corporation, and shall be responsible for keeping all of the books and accounts of the corporation, and shall render statements thereof in such form and as often as required by the Board of Directors. He shall have the power to enclose for deposit or collection all notes, drafts, checks and other obligations for the payment of money to the corporation or to its order.

Section 22. The Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members. He shall give notice in conformity with these By-Laws of all meetings of the members and the Board of Directors. In the absence of the Present and the Vice Presidents, he shall preside until a Chairman pro temper is chosen. He shall have charge of the membership ledger, all documents pertaining to title to all real property owned or held by the corporation and all rules, regulations and other documents and maps required to be filed with the corporation or in the office of the corporation by the Community Area Restrictions, an original or duplicate of each of which shall be available at all times during usual business hours for examination by members of the corporation at the principal office of the corporation. He shall also perform all other duties assigned to him by the President or the Board of Directors.

Section 23. Assistant Treasurer. The Assistant Treasurer or Assistant Treasurers, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers of the Treasurer during his absence or disability or whenever the office of Treasurer is vacant, and shall perform all duties assigned to him or them by the President or the Board of Directors.

Section 24. Assistant Secretary. The Assistant Secretary or Assistant Secretaries, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers of the Secretary during his absence or disability or whenever the office of Secretary is vacant, and shall perform all duties assigned to him or them by the President or the Board of Directors.

## ARTICLE V

### Execution of Instruments

Section 26. Proper Officers. Except as otherwise provided by law or these By-Laws, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments, shall be signed, executed and delivered by the President or a Vice President and by the Treasurer or the Secretary, or an Assistant Treasurer or Assistant Secretary; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officers, agents or employees of the corporation, or any one of them, in such manner as may be determined by the Board of Directors.

Section 27. Facsimile Signature. The Board of Directors may from time to time by resolution provide for the execution of any corporate instrument or documents by a mechanical device or machine, or by use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board of Directors.

## ARTICLE VI

Section 28. Adoption, Amendment and Repeal. The By-Laws may be amended or repealed and new By-Laws may be adopted by the affirmative vote of not less than two-thirds (2/3rds) of the members of the Board of Directors.

**ADOPTION OF BY-LAWS**

The undersigned, being all of the signers of the Petition for Charter of Incorporation of WAIALAE IKI V COMMUNITY ASSOCIATION, do hereby adopt the foregoing By-Laws as the By-Laws of said corporation.

DATED: Honolulu, Hawaii, January 30, 1981.

/s/ Thomas H. Gentry  
THOMAS H. GENTRY

/s/ Reeves L. Shaw  
REEVES L. SHAW

/s/ Norman H. Dyer  
NORMAN H. DYER

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**ASSOCIATION RULES**

***Rule #1, Delinquencies:***

Association Maintenance Assessments are due and payable quarterly on the first of January, April, July and October. Special Assessments are payable when levied as indicated by the Board of Directors. Failure to pay the quarterly Maintenance Assessments by the tenth of the month in which it is due, or to pay a Special Assessment within twenty days after it is levied, will result in the assessment of a late charge of \$25. for each delinquent payment. The late charge shall be assessed once for each delinquent payment and shall be in addition to interest at the rate of twelve percent (12%) per annum, which shall be assessed on each delinquent Assessment.

All amounts payable to the Association including quarterly Maintenance Assessments, Special Assessments (including fines), interest, late charges, attorneys' fees, and other costs shall constitute an automatic lien on the lot held by the Owner. All sums received by the Association, however designated by the Owner, shall be applied by the Association in the following priorities: (i) attorney's fees and other costs, (ii) accrued interest, (iii) late charges, (iv) delinquent Special Assessments, (v) delinquent Maintenance Assessments, (vi) unpaid costs in excess of construction deposit, (vii) current Special Assessments, and (viii) current Maintenance Assessments. If application of these priorities results in the delinquency of an Assessment (e.g. the payment was insufficient to cover all amounts then due to the Association), then a late charge will be assessed on the delinquent Assessment.

***Rule #2A, Cover and Maintenance of Vacant Lot:***

During the Twenty-four (24) Months From the Date of Conveyance of Title to the Lot From the Declarant. Vacant lots must be maintained at all times in good repair, clean condition and in such manner as not to cause a nuisance or create fire, safety or health hazards. Among other things, lots must be free of trash and other debris, and must be planted in a manner which shall prevent airborne dust, airborne seeds and other nuisances, and which shall prevent any risk of damage or injury by flooding or erosion, or siltation or blockage of drainage facilities.

Vacant lots shall be maintained as follows: for the first ten feet within boundaries adjacent to other lots all vegetation except trees other than Formosan Koa must be no more than six inches high; on the street side of a lot for the first ten feet within boundaries all vegetation must be no more than six inches high, and for the next ten feet all vegetation except trees must be no more than six inches high; all vegetation except trees within other areas of the property must be no more than twenty four inches high.

All trees and other vegetation must be maintained or eradicated to prevent damage to sidewalks, roads, curbs, walls, fences and other structures outside of or adjacent to the property, and to ensure that free and convenient use of sidewalks is not impaired or obstructed. All areas must be routinely maintained at least once a month and kept attractive in appearance and free of litter, and the View Channel restriction must be complied with at all times.

Owners shall be subject to imposition of the following fines:

- |  |   |
|--|---|
| (1) First notice, not a repeat violation:                | No fine.                                    |
| (2) Second notice or first notice of a repeat violation: | \$100                                       |
| (3) Subsequent notices for continuing violations:        | \$250 per month until the violation ceases. |

***Rule #2B, Cover and Maintenance of Vacant Lot:***

After the Twenty Four (24) Months From the Date of Conveyance of Title to the Lot From the Declarant. Vacant lots must be maintained at all times in good repair, clean condition and in such manner as not to cause a nuisance or create fire, safety or health hazards. Among other things, lots must be free of trash and other debris, *and must be landscaped, planted and irrigated pursuant to plans approved by the Architectural Advisory Board* in a manner which shall prevent airborne dust, airborne seeds and other nuisances, and which shall prevent any risk of damage or injury by flooding or erosion, or siltation or blockage of drainage facilities.

Vacant lots shall be maintained as follows: for the first ten feet within boundaries adjacent to other lots all vegetation except trees other than Formosan Koa must be no more than six inches high; on the street side of a lot, for the first ten feet within boundaries all vegetation must be no more than six inches high, and for the next ten feet all vegetation except trees must be no more than six inches high; all vegetation except trees within other areas of the property must be no more than twenty four inches high.

All trees and other vegetation must be maintained or eradicated to prevent damage to sidewalks, roads, curbs, walls, fences and other structures outside of or adjacent to the property, and to ensure that free and convenient use of sidewalks is not impaired or obstructed. All areas must be routinely maintained at least once a month and kept attractive in appearance and free of litter, and the View Channel restriction must be complied with at all times.

Owners shall be subject to imposition of the following fines:

- |  |   |
|--|---|
| (1) First notice, not a repeat violation:                | No fine                                     |
| (2) Second notice or first notice of a repeat violation: | \$100                                       |
| (3) Subsequent notices for continuing violations:        | \$250 per month until the violation ceases. |

***Rule #3, Design, Installation and Maintenance of Drainage Facilities:***

Waialae Iki V is located on a ridge which requires provision for adequate drainage of Storm runoff. Owners are obliged to design, install or construct in accordance with plans approved by the Architectural Advisory Board drainage facilities sufficient to prevent any damage or injury to Association or private property by flooding, erosion or siltation, and thereafter to maintain such facilities in good condition sufficient for their purpose.

Owners shall be subject to imposition of the following fines:

- |   |   |
|---|---|
| (1) First notice, not a repeat violation where no flooding, siltation or damage has resulted:               | No fine.                                    |
| (2) Second notice or first notice on a repeat violation or when flooding, siltation or damage has resulted: | \$100 to \$250                              |
| (3) Subsequent notices for continuing violations:   | \$250 per month until the violation ceases. |

***Rule #4, Dust and Runoff Control After Lot Clearing:***

At any time a lot is cleared of ground cover incident to construction or otherwise, adequate measures must be instituted immediately and maintained at all times to prevent (i) nuisances and annoyances from airborne dust, including but not limited to irrigating with appropriate frequency, and (ii) any risk of damage or injury by flooding, erosion or siltation or blockage of drainage facilities.

Violations shall be subject to imposition of the following fines:

- |  |   |
|--|---|
| (1) First notice, not a repeat violation:                | No fine.                                    |
| (2) Second notice or first notice of a repeat violation: | \$100                                       |
| (3) Subsequent notices for continuing violations:        | \$250 per month until the violation ceases. |

***Rule #5, Pre Construction Requirements:***

A. Plans Submission. All plans must be submitted by the owner's architect directly to Design Partners at 1251 South King Street, Suite D, Honolulu, Hawaii 96814 and accompanied by the appropriate preliminary and final review fees of insert fee and insert fee with check(s) payable to "Waialae Iki V Association." After review by the Architectural Advisory Board, (AAB), the architect will be advised in writing of the AAB's decision; the AAB will communicate only with the owner's architect of record.

Association Rules

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B. Deposit. The lot owner assumes full responsibility for the conduct of his contractor. "Contractor" in these Rules is defined as the general contractor, his subcontractors, their subcontractors, and employees and delivery persons. Before final approval of architectural and landscaping plans is granted, a deposit of \$1,000, payable to "Waialae Iki V Association" is required. Refund of the \$1,000 deposit in part or in whole shall be contingent upon the contractor's conduct. All contractors shall avoid any rubbish or debris from lettering any property of the Association or any other

owner and shall avoid any damages to property of the Association and other owners. Any necessary cleaning or repairs shall be performed promptly by the responsible contractor(s).

The owner will be asked only once to resolve an undesirable condition created by the contractor, and the contractor will be afforded a reasonable amount of time to take appropriate action. Thereafter, the Association shall be entitled to take whatever action it may deem necessary or appropriate to remedy the condition. In addition to any other right or remedy the Association or any other owner may have the Association may pay the costs incurred by the Association from the deposit. The deposit will be refunded only after (i) the architect has certified completion of construction, (ii) a satisfactory post construction inspection has been accomplished and (iii) landscaping has been accomplished in accordance with Rule 7.

**Rule #6, Contractors' Conduct:**

Owners are responsible for, and contractors are required to maintain, a reasonable state of cleanliness by keeping all construction material and debris within the confines of the property on which building and to respect the rights and property of residents by refraining from noise such as loud radios, and hazardous conditions such as speeding. Construction work may not commence before 7:00 a.m. and may not continue past 5:00 p.m. on any day. Contractors may remain on the premises only so long as construction work continues and except for the lunch break, must depart the project as soon as work ceases. This expressly prohibits "Pau Hana" gatherings.

All facilities at the pavilion, including the parking lot, are not available for use by contractors. In the sole discretion of the Board of Directors, and without limiting any other right or remedy of the Association or any other owner, violation of this Rule may result in removal of the contractor(s) from the property and/or permanent refusal of entry to the same contractor(s) even if subsequent access would be for a different owner.

In addition the owner shall be subject to the imposition of the following fines:

- (1) First Notice, not a repeat violation: \$0 to \$50
- (2) Second notice, or first notice on a repeat violation: \$100 to \$250
- (3) Subsequent notices: \$150 to \$500

**Rule #7, Sunday Construction:**

Construction on Sundays and all federal and State holidays is strictly prohibited unless prior, written permission is granted by the Board of Directors through the Property Manager on a case by case basis. Therefore, entry to Waialae Iki V by contractors is barred on these days without this prior, written approval. Generally, no request will be granted unless the contractor guarantees the Board of Directors that the work will be totally noiseless. The permitted work may not commence before 8:00 A.M. and may not continue past 5:00 p.m.

In the sole discretion of the Board of Directors, and without limiting any other right or remedy of the Association or any other owner, violation of this guarantee may result in removal of the contractor(s) from the property and/or permanent refusal of entry on any Sunday or holiday to the same contractor(s) even if subsequent requests are on behalf of a different owner.

In addition, the owner shall be subject to the imposition of the following fines:

- (1) First notice, not a repeat violation: \$0 to \$50
- (2) Second notice, or first notice on a repeat violation: \$100 to \$250
- (3) Subsequent notices: \$150 to \$500

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**Rule #8, Landscaping After Substantial Completion of Dwelling:**

Lot must be landscaped within ninety (90) days after first occupancy or the date of substantial completion, whichever occurs first, in accordance with a detailed landscaping plan approved by the Architectural Advisory Board. Landscaped lots must be regularly maintained and at all times must be kept attractive in appearance and free of litter, and View Channels must remain unobstructed.

Owners shall be subject to imposition of the following fines:

- |   |   |
|---|---|
| (1) First notice:                                 | No fine.                                    |
| (2) Second notice:                                | \$100                                       |
| (3) Subsequent notices for continuing violations: | \$250 per month until the violation ceases. |

***Rule #9, Residential Area Building Requirements:***

In the event of any violation of the Residential Area Building Requirements, Section 4.02 of the Declaration of Covenants Conditions, and Restrictions, which is not specifically addressed by the foregoing Rules, including but not limited to construction of improvements not finally approved by the AAB, violation of view channel easements, set back lines or lot coverage restrictions, and building height limitations, the Board may impose monthly or other periodic fines in whatever amount the Board determines to be appropriate in order to secure conformance with the Residential Area Building Requirements.

If the Board, in its discretion, determines that securing conformance is impractical or unreasonable, it may alternatively impose a lump-sum fine for continuance of the condition not in conformance with the Residential Area Building Requirements, regardless of whether a variance therefore is granted. In determining the amount of any fine imposed pursuant to this Rule, the Board shall consider all of the relevant factors, including but not limited to:

- (1) The nature of the violation;
- (2) The impact upon other owners and the Association;
- (3) The cost of conforming the condition to the restrictions,
- (4) The benefit which the owner(s) derive from maintaining the condition;
- (5) The size, dimension or other pertinent features of the nonconforming condition;
- (6) Whether the circumstances suggest that the violation is a result of any knowing or intentional act or reckless disregard on the part of the owner(s) and/or their agents;
- (7) Any failure by the owner(s) to comply with any prior notices, fines or other orders of the Board to secure conformance with the Residential Area Building Restrictions.

***Rule #9A, Other Provisions of the Waialae Iki V Community Association Charter of Incorporation, the Declaration of Covenants, Conditions and Restrictions, Bylaws and the Architectural Advisory Board:***

These Rules are in addition or supplemental to, and in no way shall limit, waive or restrict the obligations of Owners at all times to observe and perform all of the provisions, conditions and obligation of the Waialae Iki V Community Association charter of Incorporation, the Declaration of Covenants, Conditions, and Restrictions, Bylaws and the Architectural Advisory Board.

Owners shall be subject to imposition of the following fines:

- |   |                |
|---|----------------|
| (1) First notice, not a repeat violation:                 | \$0 to \$50    |
| (2) Second notice, or first notice on a repeat violation: | \$100 to \$250 |
| (3) Subsequent notices:                                   | \$150 to \$500 |

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***Rule #10, Fines:***

Fines shall constitute an automatic lien upon the Owner's lot(s) and shall be paid in full within thirty (30) days after imposition. The existence of any violation on any day of the month shall constitute a violation for that month. Fines are in addition to all other rights and remedies available to the Association and of any other Owner, and shall be imposed in addition to any and all other costs and expenses incurred by the Association in connection with a violation, which shall be charged to the Owner. Such costs and expenses shall include without limitation charges to correct the violation, fees incurred by the managing agent, engineers, architects, attorneys and accountants, and interest.  
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***Rule #11, Notice of Violation By the Board of Directors:***

- A. Written Notice. The Owner shall be given written notice of violation(s) and of the proposed fine(s). The notice shall state (i) a summary of facts constituting the violation, (ii) the proposed fine, if any, and (iii) that the Owner shall have ten (10) days (or such other reasonable period of time the Board may specify) after the date of notice to deliver to the Board a written statement of any specific facts and any other reasons for denial of the violation and any other objections, and, if the owner so desires, a request to address the Board in person. If the Owner fails to present a written statement as required, then the violation shall be deemed conclusively to have occurred and the fine shall be effective.
- B. Review of Fine. If the Owner presents a written statement as required then the Board, at its next meeting, shall consider the matter, determine whether a violation has occurred, and adjust the fine accordingly. The Board of Directors shall give written notice of its decision to the Owner .

***Rule #12, Appeal Process:***

The Board of Directors shall establish an Appeals Committee comprising three Waialae Iki V owners including not more than one member of the Board of Directors. Should an Owner believe that a fine is unjust or unwarranted, the Owner may appeal to the Board of Directors in writing through the managing Agent. The Board will then refer the matter to the Appeals Committee which will consider the circumstances and respond in writing to the Owner, again through the Managing Agent. If the Owner is still dissatisfied with the outcome, he/she may request to address the Board in person.