

IN THE DEPARTMENT OF REGULATORY AGENCIES
STATE OF HAWAII

In the Matter of the Incorporation of
KAILUA VIEW ESTATES ASSOCIATION, INC.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made this _____ day of _____, 1979, by Taiyo Fudosan Kogyo Company, Ltd., a Japan corporation, whose principal place of business and post office address is 1-5-30 Nanko, Nishi-ku, Yokohama, Japan, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain lands in Kailua-Kona, Island, County and State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof;

WHEREAS, Declarant intends to develop said property with residences, vacant residential lots, recreational facilities, parks and open areas by means of a residential subdivision development which will combine practical usefulness and economic benefit with aesthetic enjoyment so as to provide a residential subdivision that will grow and appreciate in its uses and activities, year by year, resulting in a community, specifically distinct from a uniform detached residential development, and the purpose of this Declaration is to promote and perpetuate such a development to meet the needs and demands of the population of the area and for the benefit of the County of Hawaii and State of Hawaii.

AND WHEREAS, Declarant desires to insure the attractiveness of the individual lots and facilities within said residential subdivision and to prevent any future impairment thereof, to prevent nuisances, to protect, preserve and enhance the values and amenities of said Subdivision.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold, conveyed, encumbered, occupied and improved, subject to the Kailua View Estates Restrictions, meaning the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the properties. These limitations, restrictions, covenants and conditions shall run with said property and shall be binding upon all parties.

ARTICLE I **DEFINITIONS**

Unless the context in the Kailua View Estates Restrictions otherwise specifies or requires, the terms defined in this Article I shall for all purposes of the Kailua View Estates Restrictions have the meanings herein specified:

Association. Association shall mean the Kailua View Estates Association, Inc., a nonprofit corporation described in Article V, and its successors and assigns.

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

By-Laws. By-Laws shall mean the By-Laws of the Association which have been or shall be duly adopted substantially in the form attached hereto as Exhibit "C" and incorporated herein, as such By-Laws may from time to time be amended.

Charter. Charter shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Section 416-19, of the Hawaii Revised statutes, (as amended) substantially in the form attached hereto as Exhibit "B" and incorporated herein, as such Charter may from time to time be amended.

Common Area. Common Area shall mean all of the real property which has been conveyed in fee to the Association, pursuant to the provisions hereinafter set forth, together with all of the improvements from time to time constructed thereon.

Custom Lot. Custom Lot shall mean all of the real property referred to in Section 3.03(a), including all improvements thereon.

Declarant. Declarant shall mean Taiyo Fudosan Kogyo Company, Limited, its successors and assigns.

Design Committee. Design Committee shall mean the Committee created pursuant to Article IV hereinafter set forth.

Design Committee Rules. Design committee Rules shall mean those rules adopted by the Design Committee pursuant to section 4.04 of Article IV.

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

File or Filed. File or filed shall mean with respect to any subdivision map, the map which has been filed in the Bureau of Conveyances of Hawaii or in the Office of the Assistant Registrar of the Land Court.

Fill. Fill shall mean any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen inches.

Fiscal Year. Fiscal Year shall mean the year from _____

Garage. The term "garage" shall mean a completely enclosed structure used for parking cars therein.

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

Lot. Lot shall mean any lot designated on a subdivision map for residential use; except when clearly contrary to the context, shall include all improvements thereon. Upon the splitting of any lot pursuant to Section 7.04, the term "lot" shall mean each parcel or residential unit into which such lot has been split. Upon the consolidation of two or more lots pursuant to Section 7.04 the term "lot" shall mean the parcel consisting of the lots so consolidated.

Maintenance Assessment. Maintenance assessment shall mean any assessment levied pursuant to Section 6.02.

Manager. Manager shall mean the person or corporation appointed as such, pursuant to Section 5.05.

Kailua View Estates Rules. Kailua View Estates Rules shall mean the rules from time to time in effect pursuant to the provisions of Section 5.06.

Kailua View Estates. Kailua View Estates shall mean all of the real property referred to in Section 2.01, together with such other real property from time to time annexed thereto pursuant to the provisions in Section 2.02.

Kailua View Estates Restrictions. Kailua View Estates Restrictions shall mean with respect to all property within Kailua View Estates, the limitations restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and with respect to any property within Kailua View Estates which is annexed pursuant to Section 2.02, as such Declaration may from time to time be supplemented or modified by the provisions of a declaration, if any, filed with respect to such property, pursuant to paragraph (a) of Section 2.02.

Notice. Notice shall mean a notice delivered pursuant to Section 7.09.

Operating Fund. Operating fund shall mean the fund created pursuant to Section 6.01.

Owner. Owner shall mean the person or persons, corporation or corporations, or other legal entity or entities, as set forth in Section 5.02, provided, however, that:

(a) for the purposes of limitations and restrictions set forth in Article III, "Owner" shall not include the Declarant with respect to any lots owned by the Declarant; and

(b) "Owner" shall include for the purposes of Article III, unless the context otherwise requires, family, invitees, licensees and lessees of any owner.

Private Area. Private area shall mean any real property conveyed to an Owner (other than the Declarant or the Association) by means of a deed, together with all improvements from time to time constructed thereon.

Record and Recorded. The terms "record" and "recorded" shall mean with respect to any document, that such document has been recorded in the Bureau of conveyances of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of Hawaii or both.

Recreational Facility. The term "recreational facility" shall mean any improvement used for or in connection with any recreational purpose or activity, interpreted broadly to include without limitation, park and playground facilities, riding stables and trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and crafts centers, swimming and other pools.

Residence. Residence shall mean a building or buildings used for residential purposes, together with any garage or similar outbuilding appurtenant there whether or not a part of the same structure.

Road. Road shall mean any paved vehicular way constructed within or upon any portion of the common area except any apron or other paved area constructed for the purpose of providing paved access from such way to any private area.

Special Assessment. Special assessment shall mean any assessment levied pursuant to Section 6.04.

Subdivide. Subdivide shall mean the division of any lot into two or more parcels.

Subdivision Map. Subdivision map shall mean any map recorded in the Bureau of conveyances or filed in the Office of the Assistant Registrar of the Land Court.

Visible from Neighboring Property. 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 any adjoining property excluding contiguous property owned by the Owner of the property involved, but including common area and streets, assuming that such adjoining property has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the property upon which such object or activity is located, whichever elevation is the lower.

ARTICLE II
KAILUA VIEW ESTATES PROPERTY SUBJECT TO
KAILUA VIEW ESTATES RESTRICTIONS

Section 2.01. Kailua View Estates: Initial Development.

The initial development shall be all of the property described in Exhibit "A" attached hereto and made a part hereof, and the same shall be held, sold, conveyed, encumbered, occupied and improved subject to the Kailua View Estates Restrictions. Said property, together with such other real property from time to time annexed thereto and made subject to Kailua View Estates restrictions pursuant to Section 2.02 shall constitute Kailua View Estates.

Section 2.02. Annexation of subsequent developments.

The declarant may, pursuant to the following provisions of this section, from time to time, and in its sole discretion, annex to Kailua View Estates all or any part of the real property (not then constituting a part of Kailua View Estates) owned by it at the time of such annexation and situated in Kailua Kona.

(a) The annexation of such property shall become effective when, and only when, 20 the last of each of the following occurs:

(1) Declarant or Association shall have recorded a declaration, which may consist of more than one document, and which shall, among other things: (aa) describe the real property to which it is to be so annexed to Kailua View Estates; (bb) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to such property as provided in paragraph (c) below; and (cc) declare that such property is held, sold, conveyed, encumbered, occupied and improved subject to Kailua View Estates restrictions; and

(2) With respect to the real property described in such declaration, 32 Declarant or Association shall have filed a subdivision map.

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

(c) Any provision herein to the contrary notwithstanding, the declaration referred to in paragraph (a) above may, with respect to all or any part of the property described in such declaration, provide for or refer to one or more documents creating any or all of the following:

(1) Such new land classification not then provided for in Section 3.01 and such limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property;

(2) With respect to the land classification provided for in section 3.01 such additional or different limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property, provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to common areas lying within such property shall not discriminate between owners or their guests, or between owners of such property and other owners of any other property within Kailua View Estates, and/or;

(3) A Declaration of Restrictions, subordinated to Kailua View Estates Restrictions and applicable exclusively to a specified area.

The Kailua View Estates Restrictions as applicable to such property upon the annexation thereof unto Kailua View Estates, shall be deemed to include any and all additions and modifications thereto authorized by subparagraphs (1) and (2) above and set forth or referred to in such said declaration.

(d) No property, except that described in said Exhibit "A" and hereby made subject to the Kailua View Estates Restrictions and except that specifically annexed as hereinbefore provided shall be deemed subject to the Kailua View Estates Restrictions, whether or not shown on any subdivision map filed by Declarant or described or referred to on any document executed and/or recorded by Declarant. No designation of any parcel, lot or other area on any map filed by Declarant as a private area, custom area, common area, road, street, school or park or as any other type of parcel, lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in said Exhibit "A", or specifically later annexed as aforesaid, and so designated on a subdivision map for such use, nor shall any Owner, or the public, or any public body or agency, or any other person acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. 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 the Kailua View Estates Restrictions any land it may now own or hereafter acquire other than that described in said Exhibit "A" or such amendment.

ARTICLE III
LAND CLASSIFICATIONS AND RESTRICTIVE COVENANTS

Section 3.01. Land Classifications.

All land within Kailua view Estates has and shall be classified into the following areas:

- (a) private area; and
- (b) common area.

Section 3.02. Private Area: Uses; Restrictions.

Each lot in the private area shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in Section 5.05 with respect to each lot.

(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 in fee by the Declarant to an Owner, shall be made or done except upon strict compliance with and within the restrictions of the provisions of Section 3.03.

(c) Each lot shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such lot, provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

(1) any artist, artisan or craftsman from pursuing his artistic calling upon the lot, if such artist, artisan or craftsman also uses such lot for residential purposes, is self-employed and has no employees working on such lot, and does not advertise or offer any product or work of art for sale to the public upon or from such lot; and,

(2) the leasing of any lot from time to time by the owner thereof, subject, however, to all of the restrictions of Kailua View Estates Restrictions.

(d) Each lot and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety, or health hazard to Kailua View Estates or any part thereof, all at such Owners sole cost and expense.

e) 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.

(f) No signs whatsoever, including without limitation, 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 one 1 square foot or less for each resident;

(3) during the time of construction of any residence or other improvement, job identification signs having a maximum face area of six 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 square feet, such sign to refer only to the premises on which it is situated.

(g) No truck of more than one ton capacity shall be kept, placed or maintained upon any lot in such a manner that such truck is visible from the adjoining streets, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one year during and used exclusively in connection with the construction of any work or improvement permitted by Section 3.03.

(h) No accessories, structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the residence, 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 during and used exclusively in connection with the construction of the main structure of the residence.

(i) No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any lot so as to be visible from any adjoining streets, provided that nothing in this paragraph shall prevent an Owner from performing the maintenance work and minor repairs on his own trailer, vehicle or boat in his garage. Without limitation to any other remedy set forth in this Declaration, the Association, by its agents, shall have the right to enter upon any lot where any automobile is being repaired or is being maintained which is not in good operating condition, and to remove such automobile to a public dump, a repair shop, or a storage yard and the Owner of the lot shall be responsible for all costs involved (whether or not he be the owner of the automobile) and shall pay to the Association all costs incurred, and the Association and its agents shall not be liable for trespass or for conversion or for any damages to such automobile or for the taking of the same.

(j) No garbage or trash shall be permitted on any lot except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property.

(k) No open storage of furniture, fixtures, appliances and other goods and chattels not in active use will be permitted so as to be visible from neighboring property and no outside clothes lines or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

(l) The Owner shall not permit any exterior fires whatsoever, except barbecue and imu fires, and, shall not permit any condition on his lot which creates a fire hazard.

(m) No Owner shall park his car on any public park or sidewalk area or on any common area or on any lot visible from an adjacent street, except in a garage or on a paved driveway area.

(n) The Owner shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his lot.

(o) No trailer, tent, shack, detached garage, or other outbuilding erected upon the granted premises shall at any time be used as a residence temporarily or permanently, or shall any structure of a temporary character be used as a residence.

(p) No dumping of fish cleaning or other garbage on the above-described premises, open lots and adjoining lands will be permitted.

(q) Clothes Lines and Storage. No clothes lines shall be placed on any lot in a location visible from the street. No lumber, metals or bulk materials shall be kept, stored, or allowed to accumulate on any lot except building or other materials to be used in connection with the work of construction, alteration or improvement approved in accordance with the terms thereof.

(r) No fowl or animals shall be raised or kept on the premises except no more than two domesticated household pets.

Section 3.03. Private Area: Construction and Alteration of Improvements; Excavations; etc.

The right of an Owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under, or above any lot of a private area or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or to install any utility line (wire or conduit) thereon or thereover, shall be subject to all of the following limitations and conditions of this section:

(a) Custom Lots. "Custom lots" shall be defined as those privately owned lots upon which no completed house or dwelling structure exists. Except to the extent permitted by paragraph (2) below, any construction or reconstruction of, or the refinishing or alteration of any part of the exterior of any improvement in any lot is prohibited until and unless the Owner of such lot first obtains approval therefor from the Design Committee as herein provided, and otherwise complies with all of the provisions of this section:

(1) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such improvement for which the Owner has obtained approved plans pursuant to this section:

(i) No excavation or fill which would be visible from the neighboring property shall be created, or installed upon;

(ii) no change in the natural or existing drainage for surface water upon; and,

(iii) no power, telephone or other utility line (wire or conduit) which would be visible from neighboring property shall be installed upon any custom lot until and unless the Owner of such lot first obtains the approval therefor from the *Design Committee* as herein provided and such Owner otherwise complies with all of the provisions of this section. The Association shall, in the event of any violation of the provisions hereof, restore such private area to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of such lot shall reimburse the Association for all expenses incurred by it in performing its obligations under this paragraph.

(2) Any Owner proposing to construct or reconstruct or to refinish or alter any part of the exterior of any improvement visible from neighboring property on or within his lot or to perform any other work which under the provisions of this paragraph (a) requires prior approval of the Design Committee, shall apply to the Design Committee for approval thereof as follows:

(i) The Owner shall submit to the Design Committee for approval prior to construction, preliminary plans for the proposed work, showing, in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within thirty (30) days after the submission of them to it and shall return such plans to the owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to return within said thirty (30) day period shall be deemed to mean that the plans are approved.

(ii) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee. An Owner may also extend his garage by the equivalent of one more parking space without the approval of the Design committee provided that such addition be of the same architectural design, color and materials of the original.

(iii) Upon the completion of any construction, reconstruction, alteration or refinishing, or the completion of any other work .for which approved plans are required pursuant to this section, the owner shall give written notice thereof to the Design committee which shall within thirty (30) days inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans and specifications. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced

action to remedy within said sixty (60) day period, the Design Committee shall notify the Association of such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee fails to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(iv) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in the Kailua View Estates Restrictions, except as may be specifically permitted therein, and in the event of violation of any of such Kailua View Estates Restrictions, by an Owner, whether or not the Design Committee shall have approved the plans and specifications, the Association or any other owner shall have the right to commence and pursue any remedy provided in the Kailua View Estates Restrictions for the violation by an owner of any of such restrictions.

(v) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in paragraph (b) below, and also shall consider whether the proposed improvement:

(1) is compatible and in harmony as to quality and type of materials and workmanship and as to external design with reference to existing structures and other improvements in the area and with reference to the location of the proposed improvement with respect to topography and ground elevation;

(2) conforms to the general plan of the entire development;

(3) constitutes a suitable and adequate development of the lot

(4) is, in the case of the principal building, substantially as valuable an improvement as the other comparable buildings in the area, or exceeds the same; and,

(5) will not, because of its design unreasonably interfere with the light and air or view of adjoining lots.

(b) All Private Areas: The following standards and restrictions are applicable to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing upon any private area:

(1) No more than one residence shall be constructed on any lot. A guest suite or like facility without a kitchen, visually attached to the main residential structure, with a minimum connecting structure of a wall or fence not less than six feet high or a covered walk shall be deemed to be included as a part of a single residence.

(2) No structures shall be constructed between any applicable building setback lines pertaining to the area and the boundary of the lot, provided that walks, fences, walls, driveways and garbage receptacle enclosures may be so constructed if not in

violation of any other restriction of this Declaration. No fence or wall shall be constructed on any lot in a "CUSTOM" area within 10 feet of the front boundary line.

(3) No reflective finishes shall be used on exterior surfaces (other than glass and the surfaces of hardware fixtures) where such exterior surface is visible from neighboring property. The colors of all exterior surfaces visible from neighboring property shall be shades of gray, brown, red-brown, yellow-brown, brown-green and gray-green in values from white to 75% of black and blue-green between medium and dark values.

(4) No roof shall be finished with built-up tar and gravel, except that flat roofs only may be built-up tar and gravel in colors of dark brown to red-brown or gray to blue-gray.

(5) No metal roof or siding visible from neighboring property shall be permitted unless the same be maintained in non-reflective condition, and no gas tanks will be permitted on any lot which are visible from neighboring property.

(6) Each residence shall have appurtenant to it covered parking space for not less than two automobiles.

(7) No permanent exterior electric lighting of any sort shall be installed or maintained, the light source of which is visible from neighboring property. No antenna of any sort shall be installed or maintained which is visible from neighboring property except that antenna placed on the ground and not exceeding ten (10) feet in height above normal grade are allowed if not visible from the adjacent street.

(8) No used or second hand lumber shall be incorporated in the construction of any improvements erected upon the above-described premises, nor shall any building be placed or re-erected upon said premises which shall previously have been erected in another location; no "quonset" type of building shall be erected, placed or maintained upon said premises.

(9) No sheet metal roofs will be permitted, except coated metal tiles such as Decromatic roof tile or its equivalent.

(10) No dwelling house shall be erected upon said premises which shall contain less than twelve hundred (1200) square feet of ground floor area, exclusive of servant's quarters, garage, storage space, workshop, verandas and open porches.

(11) Garages and carports with entrances facing the street must be a minimum of twenty (20) feet back from the street property line. All garages shall be enclosed and shall have doors.

(12) When it appears that, because of the peculiar location, size or topography of a particular lot, its Owner cannot reasonably build a residence without violating a specific restriction in this section, the Board shall have authority, upon approval of the Design Committee, to grant to such Owner a waiver permitting him to proceed to build and occupy a residence without regard to the specific restriction.

Section 3.04. Common Area: Uses; Restrictions.

The exclusive use of the common area shall be reserved equally to all Owners, except as herein specifically provided, and every Owner shall have a right and easement for enjoyment in and to the common area, which easement shall also be appurtenant to and shall pass with the title to every lot, subject, however, to the following limitations and restrictions:

(a) The use of the common area shall be subject to the Kailua View Estates Rules.

(b) The use of the common area shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance thereof to the Association, to such road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other 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 paragraph (c) of Section 5.05.

(c) 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 of the provisions of Section 3.05.

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above and section 3.05 there shall be no use of the common area, exclusive of roads, except natural recreational uses which do not injure or scar the common area or the vegetation thereof, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their private areas, or in their enjoyment of the common areas; without limiting the generality of the foregoing:

(1) There shall be no camping in common areas; except as permitted by the Board by written license.

(2) There shall be no fires started or maintained on the common area, except fires started and controlled by the Association incidental to the maintenance and preservation of property within Kailua View Estates, and cooking and campfires in proper enclosures in picnic or other areas within recreational facilities developed therefor by the Association.

(3) No animals shall be permitted on common areas except generally recognized house or yard pets when accompanied by and under the control of the Owners to whom they belong, livestock owned by the Association, and horses upon paths and other areas from time to time designated as bridle paths by the Association and upon such areas developed or maintained as equestrian recreational facilities by the Association.

(e) The rights to use and enjoy the common areas shall extend to the members of the families of all Owners and to their invitees.

Section 3.05. Common Area; Construction and Alteration of Improvements.

No improvement, excavation of work which in any way alters any common area from its natural or existing state on the date when such common area was acquired by the Association, shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this section:

(a) Except to the extent otherwise provided in paragraph (d) below, no person other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter or maintain any excavation or fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any common area.

(b) Except to the extent otherwise provided in paragraph (c) below, if the Association proposes to construct, reconstruct, refinish or alter the exterior of any improvement located or to be located upon any common area, or if the Association proposes to make or create any excavation or fill or to change the natural or existing drainage or surface waters, or to remove any trees, shrubs or ground cover or plant any trees, shrubs or ground cover upon any common area, the Association shall submit to the Design Committee for approval the final plans and specifications for any such work in such form and containing such information as the Design committee may from time to time require. The Design Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if the following conditions have all been satisfied:

(1) If the plans are to construct any new improvements, including any alteration of the exterior appearance of any existing improvement upon any common area, the Design committee finds that such improvement complies with the standards and restrictions set forth in subparagraphs (2) through (5) inclusive, of paragraph (b) of Section 3.03 with respect to private areas, which standards and restrictions will also apply to common area, and that the design of such improvement is reasonably necessary or desirable in order to carry out the aims of the Association, and is in harmony with other improvements and the overall appearance of Kailua View Estates as planned.

(2) The Design Committee finds that the proposed work shall not because of its design materially prejudice Kailua View Estates or any Owner therein in the use and enjoyment of its property. Such approval shall be in writing, provided, however, that plans which have neither been approved or rejected within forty-five (45) days from the date of submission thereof to the Design Committee shall be deemed approved. Rejection of plans by the Design Committee shall be in writing and shall set forth the reasons for such rejection. In the event of any such rejection any member of the Board shall have the right to submit to a meeting of the Association duly called, the notice of which shall contain reference to the consideration notice of the matter the question of whether to abandon the proposed improvement, excavation or work or to have the same redesigned and resubmitted to the Design Committee for approval.

(c) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof upon a common area in accordance with the last plans thereof approved by the Design Committee, or if such improvement existed upon the common area when such common area was conveyed to the Association, then in accordance with the original design, finish or standard of construction of such improvement when such common area was conveyed to the Association.

(2) Construct, reconstruct, replace or refinish any road improvement upon any portion of the common area designated on a subdivision map as a road.

(3) Replace any destroyed 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 Kailua View Estates and of roads, for the regulation of traffic, including parking, and for the regulation and use of the common area and for the health and welfare and safety of Owners and the public, provided that the design of any such signs or markers be first approved by the Design committee.

(d) Any Owner may, at any time and from time to time install and maintain within a common area any subsurface utility system, provided the same be approved by the Design Committee and an easement therefor be obtained from the Association.

Section 3.06. Presumption of Compliance.

All of the following improvements, excavations, fills and other work shall for all purposes of the Kailua View Estates Restrictions be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article III:

(a) Those existing or maintained within or upon any property within Kailua View Estates at the time such property became a part of Kailua View Estates.

(b) Those existing or maintained within a private area at the time such private area was first conveyed by the Declarant to an Owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restriction in the Kailua View Estates Restrictions, pursuant to plans and specifications approved by the Design Committee.

Section 3.07. Governmental, Public Utility,

Eleemosynary, Religious, Educational, Community and Civic Organizations.

Anything in the foregoing sections of this Article III to the contrary notwithstanding, the restrictions on improvements, use and occupancy set forth in said sections shall not apply to any lot or other area while and so long as the same is owned by or leased to state of Hawaii or County of Hawaii, or any governmental agency, public utility, eleemosynary institution, religious or educational institution, or community or civic organization (other than the Association) and used for public, governmental, public utility, charitable, religious, educational, community or civic purposes, whenever and to the extent, but only to the extent, that such restrictions shall prevent reasonable use of such lot for said purposes. All restrictions not so preventing shall continue to apply as if not so used, including without limitation, the requirements of the Design Committee approval regarding improvements to be made by said State of Hawaii, County of Hawaii, agency, public utility, institution or organization in the same manner as if the same were to be made by any private individual or Owner. On cessation of such use, the restrictions of this Article III shall become applicable again in their entirety. The Declarant and the Association shall each have the power to release any lot or other area owned by it, temporarily or forever from any restrictions in this Article III if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of the same by said State of Hawaii, County of Hawaii, agency, public utility, institution or organization. While so owning or leasing and so using, said State of Hawaii, County of Hawaii, agency, public utility, institution or organization shall have no right to vote as a member of the Association, nor shall it be liable for any assessments under the provisions of Article VI, but shall be liable for all costs and expenses incurred by the Association in enforcing against it any of the provisions of this Declaration or arising out of any default by it of said provisions.

ARTICLE IV
DESIGN COMMITTEE

Section 4.01. Design Committee: Organization, Power of Appointment and Removal of Members.

(a) There shall be a Design Committee consisting of three members. Every member other than an initial member hereinafter designated, shall also be an Owner.

(b) The following persons are hereby designated as the initial members of the Design Committee:

- (1) Gregg R. Kashiwa;
- (2) Jon T. Miho; and
- (3) Calvin T. Nakagawa

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as herein set forth.

(d) Except as provided in paragraph (e) below, the right from time to time to appoint and remove all members of the Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(e) The right from time to time to appoint and remove members of the Design Committee shall be reserved to and vested in the Association as follows:

(1) From and after five (5) years from the date first above written, the Association shall have the right to appoint and remove one member of the Design Committee, who shall be the member, who is the most recently appointed member as of the date such right is first exercised.

(2) From and after ten (10) years from the date first above written, the Association shall have the right to appoint and remove the two members of the Design Committee.

(3) The Association shall have the right to appoint and remove all members, of the Design Committee from and after twenty (20) years from the date first above written, provided, however, that if the Declarant fails to exercise its rights under paragraph (d) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members.

(f) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant or to the Association, whichever then has the right to appoint and remove members.

Section 4.02. Design Committee Duties.

It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Committee rules pursuant to Section 4.04 and to perform such other duties from time to time delegated to it by the Kailua View Estates Restrictions.

Section 4.03. Design Committee Meetings, Actions, Compensation and Expenses.

The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two members shall constitute the act of the Design committee, unless the unanimous action of its members is otherwise required by the Kailua View Estates Restrictions. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with their performance of any Design Committee function.

Section 4.04. Design Committee Rules.

The Design Committee may from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design

Committee Rules” which, among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements which must be approved by the Design Committee. A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Design Committee shall be kept available at all times at the office of the Association and at the office of Declarant, for the inspection of any Owner, architect or agent of the Owner or architect. The Design Committee Rules shall, to the extent practical, establish the standards which shall be required in the construction of any residences or buildings to be constructed in Kailua View Estates.

Section 4.05. Non-Waiver.

The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under Kailua View Estates Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

Section 4.06. Estoppel Certificate.

Within thirty (30) days after written demand therefore is delivered to the Design Committee by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, in no event to exceed \$25.00, the Design Committee shall deliver to such Owner an estoppel certificate executed by any two of its members in form suitable-for recording in the Bureau of Conveyances of Hawaii and in the Office of the Assistant Registrar of the Land Court, certifying with respect to any lot of said Owner that, as of the date thereof, either (a) all improvements and other work made or done upon or within said lot comply with the Kailua View Estates Restrictions, or (b) such improvements and/or work do not so comply, in which event the certificate shall also (i) identify the noncomplying improvements and/or work, and (ii) set forth with particularity the cause or causes for such noncompliance. Any purchaser or lessee from the Owner or mortgagee or other encumbrancer of the property shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such purchaser, lessee, mortgagee or other encumbrancer.

Section 4.07. Liability.

Neither the Design Committee or any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any property within Kailua View Estates, or (d) the execution and filing of an estoppels certificate pursuant to Section 4.06, whether or not the facts therein are correct, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee, or any member thereof may, but is not required to, consult with or hear the Association or any Owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

Section 4.08. Non-Existence of Design Committee.

In the event that at any time through death, absence from the state, resignation, or for any other reason, there shall not be a Design Committee or there shall not be the members necessary to act on a particular matter, the approval or action by the Design Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be a Design Committee with sufficient members, all matters requiring such approval or action may be approved or done by the President of Kailua View Estates Association, or any vice president thereof, and his certificate that there had been no Design Committee, or that the required members were not present, and that he was acting pursuant to the authority of this section shall be conclusive between the Owners, Association, any purchaser, lessee, mortgagee or other encumbrancer, and any other persons. The President or a *vice* president acting hereunder shall be entitled to employ an architect or engineer to render technical advice and to receive reasonable compensation to be set by the Board, for his services.

ARTICLE V
KAILUA VIEW ESTATES ASSOCIATION

Section 5.01. Organization.

(a) The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and in its Charter and By-Laws.

(b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Charter.

Section 5.02. Membership.

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, the beneficial owner (herein called an "Owner") of any lot (within Kailua View Estates) shall be a member of the Association, provided, however, that no person other than an Owner may be a member of the Association.

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

Section 5.03. Voting Rights.

The voting rights of the members shall be as set forth in the Charter and By-Laws and the members shall be divided into two classes with voting powers as follows:

(a) Class A. Class A members shall be the owners, as defined in Article V herein, of lots, excepting the Class B member as hereinafter defined. The owner, or owners in the aggregate, of any lots, whether individuals, corporations or other legal entities, shall be entitled to one vote per lot. If more than one person or entity owns one given lot, anyone of said persons or entities may exercise said one vote on behalf of all of the owners of said lot, but no such vote shall be exercised without the unanimous consent of all such persons or entities.

(b) Class B. The Class B member shall be the Declarant, as defined in the Kailua View Estates Restrictions. The Class B member shall be entitled to twelve votes per lot beneficially owned by it. The Class B membership shall cease and be converted to Class A membership when Declarant's ownership in lots within Kailua View Estates totals twenty percent (20%) or less of all lots within said Kailua View Estates.

Section 5.04. Duties and Obligations of the Association.

The Association shall have the rights, obligations and duties, subject to the Kailua View Estates Restrictions, to do and perform each and every one of the following for the benefit of the owners and for the maintenance and improvement of Kailua View Estates:

(a) The Association shall accept, as part of Kailua View Estates, all property annexed to Kailua View Estates pursuant to section 2.02 and shall accept all Owners as members of the Association.

(b) The Association shall accept title to all common areas and other property from time to time conveyed to it, pursuant to Section 7.05. The Association may also acquire and accept title to any other property, real, personal or mixed, nothing herein to be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guests of the recreational facilities on the common areas to help defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by the Association.

(c) The Association shall maintain or provide for the maintenance of common areas and other property owned by the Association, including without limitation recreational facilities, and all improvements of whatever kind and for whatever purpose from time to time located on the common areas and other such property in good order and repair, provided, however, that notwithstanding the foregoing the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, but may use all legal means to force such Owner to maintain the same himself.

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

(e) Unless provided by a municipal, county or other governmental agency, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ or otherwise provide police and refuse disposal services.

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

(1) fire and extended coverage insurance on all improvements from time to time owned by the Association 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 improvement as from time to time determined by the Association. .

(2) bodily injury liability insurance with limits of not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, insuring against and all liabilities with respect to Kailua View Estates or any portion thereof, or arising out of the ownership, maintenance or use thereof; and

(3) property damage liability insurance with deductible of not more than \$2,000.00 and a limit of not less than \$500,000.00 per accident.

The policy or policies of insurance referred to in subparagraphs (2) and (3) above shall name as insures (i) the Association and its officers, the Board and its members, the Design Committee and its members and the employees of the Association, Board and Design Committee; and (ii) 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 insures as if each were separately insured under separate policies, provided, however, that such policy or policies shall not require the insured or insurers to pay any amounts in excess of the maximum limits stated therein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained, pursuant to the provisions of Kailua View Estates Restrictions, shall expressly waive any and all rights of subrogation against the Declarant, its representatives and employees, and any Owner.

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

(g) The Association shall accept and act upon applications submitted to it for the development of facilities on the common areas.

(h) The Association shall from time to time make, establish, promulgate, amend and repeal the Kailua View Estates Rules as provided for *in* Section 5.06.

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

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

Section 5.05. Powers and Authority of Association.

The Association shall have all the powers set forth in the Charter, together with its general powers as a nonprofit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Charter and By-Laws and in the Kailua View Estates Restrictions, 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 Kailua View Estates Restrictions, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners of Kailua View Estates. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any private area for the purpose of maintaining and repairing any such area, if for any reason whatsoever the Owner or Owners thereof fails to maintain and repair such area as required under Article III hereinabove or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any roads, sidewalks, schools, parks or other public areas in or adjoining Kailua View Estates, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Directors, have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of Kailua View Estates Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Kailua View Estates Restrictions.

(b) In fulfilling any of its obligations or duties under the Kailua View Estates Restrictions, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of the common area, and to the extent necessary by the failure of the Owners thereof of private areas, or in exercising any of its rights to construct improvements or other work upon any common area, including, without limitation, any recreational facility, the Association shall have the power and authority:

(1) to contract and pay for or otherwise provide for the maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon common areas, and to contract and pay for or otherwise provide for the construction of improvements or other work upon common areas, or otherwise in carrying out its functions as set forth in the Kailua View Estates Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;

(2) to obtain, maintain and pay for such insurance policies or bonds whether or not required by Section 5.04 as the Association may deem to be appropriate for the protection or benefit of Kailua View Estates, the Association, the members of the Board, the members of the Design Committee, or the Owners, including but without limitation, war risk

insurance, builders risk, workmen's compensation insurance, malicious mischief insurance, automobile, non-ownership insurance and performance and fidelity bonds;

(3) to contract and pay for, or otherwise provide for such utility services including, but without limitation, water, sewer, garbage, electrical, telephone and gas services as may from time to time be required;

(4) to contract and pay for, or otherwise provide for the services of architects, engineers, attorneys and certified public accountants or such other professional or non-professional services as the Association may deem necessary;

(5) to contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of Kailua View Estates, any property located within Kailua View Estates, and the Owners, and

(6) to contract and pay for, or otherwise provide for such materials, supplies, furniture, equipment and *labor* as and to the extent the Association deems necessary and to pay and discharge any and all liens from time to time placed or imposed upon any common 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 administration.

(c) The Association may from time to time employ the services of a manager to manage the affairs of the Association, and to the extent not inconsistent with the laws of the state of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under the Kailua View Estates Restrictions, provided, however, that the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$10,000.00 or for the performance of any work or services, which work or services are not to be completed within sixty (60) days, nor the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.

(d) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the common area, 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.

(e) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve any portion or portions of the common area with improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for them Association or for the Owners, and to borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V and to secure the same by a mortgage of the common area then owned by the Association, or any part thereof, provided, however, that no such exchange, sale or other disposition of any real

property in fee and no such borrowing and mortgaging shall be made unless the same shall have been approved by an affirmative vote of not less than two-thirds (2/3) of each class of members who may vote in person or 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. All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Owners, or in improving the properties of the Association.

Section 5.06. Kailua View Estates Rules.

(a) The Association may from time to time and subject to the provisions of the Kailua view Estates Restrictions, adopt, amend, and repeal rules and regulations to be known as the Kailua View Estates Rules governing, among other things: .

(1) the use of common areas, including without limitation the recreational facilities;

(2) the use of roads;

(3) the collection and disposal of refuse;

(4) the burning of open fires; and

(5) the maintenance of animals within Kailua View Estates.

(b) With respect to subparagraph (a) (1) above, the Kailua View Estates Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Kailua View Estates for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of common areas by any Owner or by the family, invitees, licensees, or lessees of such Owner.

(c) with respect to subparagraph (a) (2) above, the Kailua View Estates Rules may without limitation provide for:

(1) parking restrictions and limitations;

(2) maximum speeds for vehicular traffic on roads other than public roads;

(3) the time or times when commercial vehicles may be permitted to use roads other than public roads; and

(4) the type or types of vehicles other than conventionally equipped passenger automobiles which may be permitted to use the roads other than public roads.

(d) A copy of the Kailua View Estates Rules as they may from time to time be adopted, amended or repealed certified by the secretary or any assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and

duplicate copies thereof shall be delivered to each Owner on his acquisition of a lot, and a copy of each new rule or of any amendment or an existing rule and notice of repeal of any rule shall be given to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Kailua View Estates Rules shall have the same force and effect as if they were set forth and were a part of the Kailua View Estates 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.

Section 5.07. Liability of Members of the Board.

No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Design Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

Section 5.08. Exclusive Powers of the Association.

The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of Section 5.05.

ARTICLE VI
FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund.

There shall be an operating fund in which the Association shall deposit all monies paid to it as:

- (a) Maintenance assessments; facilities;
- (b) Special assessments;
- (c) Use fees paid by users of recreational
- (d) Miscellaneous fees; and

(e) Income and profits attributable to the operating fund, and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.02. Maintenance Assessment.

(a) Within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V (including a reasonable provision for contingencies, reconstruction and replacements and for alterations, modifications and improvements to existing recreational facilities, but excluding any development of substantial new recreation facilities) and in paying all expenses of the Design Committee and its operations, and shall subtract from such estimate:

(1) An amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to assessments; and

(2) The estimated receipts for all use fees, if any, to be collected from users of recreational or other facilities during such fiscal year.

(b) The sum or net estimate determined pursuant to paragraph (a) shall be divided and assessed by the Board as a maintenance assessment against the Owners, in proportion to the number of lots owned by each Owner.

(c) Any increase in maintenance assessments in an amount greater than 6% of the previous year's maintenance assessment must be approved by an affirmative vote of a majority of the Board.

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

(e) Maintenance assessments shall be due and payable by the Owners to the Association in a single installment on or before the 30th day after notice of maintenance assessments has been issued.

Section 6.03. Initial Maintenance Assessment.

Notwithstanding anything to the contrary, the initial maintenance assessment shall be \$50.00 per lot, per year, and shall be paid by the Owner upon his acquiring the status of an Owner. The initial maintenance assessment shall be paid in full without regard to the portion of the fiscal year which has elapsed up to the date of payment. However, said initial payment shall be prorated over the twelve months following the date of payment, and that portion of the payment so allocated to the following year shall be credited to the Owner's maintenance assessment of such following year.

Section 6.04. Special Assessments.

The Board shall levy a special assessment against any Owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Kailua View Estates Restrictions, the Kailua View Estates or the Design Committee Rules, [if] monies were expended from the operating fund by the Association in performing its functions under the Kailua View Estates Restrictions. Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, engineers', architects', attorneys', and accounts' fees where reasonably incurred by the Association.

Section 6.05. Default in Payment of Assessments.

(a) Each assessment under this Article VI shall be a separate distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot

by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at ten percent (10%) and costs, including reasonable attorneys' fees, shall be and become a lien upon the lot or lots of such Owner upon recordation by the Association of a notice of default. 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 or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any lot or lots and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

ARTICLE VII **MISCELLANEOUS PROVISIONS**

Section 7.01. Amendment or Repeal.

In addition to the rights reserved to the Declarant pursuant to section 2.02 to modify or supplement the Kailua View Estates Restrictions with respect to property annexed to Kailua View Estates and unless specifically provided to the contrary herein, the Kailua View Estates Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Kailua View Estates, and any limitation, restriction, covenant or condition thereof may, at any time, be amended or repealed upon the happening of all of the following events:

(1) The vote of Owners having not less than two-thirds (2/3rd) of the total votes of each class of Owners of lots within Kailua View Estates approving the proposed amendment or amendments or the repeal of Kailua View Estates Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the

consideration of the amendment or repeal of the Kailua View Estates Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be;

(2) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Kailua View Estates 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.

(3) The recordation of a written instrument also setting forth in full said amendment or amendments to the Kailua View Estates Restrictions, executed by the Owners having not less than two-thirds (2/3rds) of the total votes of each class of Owners of lots within Kailua View Estates.

Section 7.02. Enforcement, Non-Waiver.

(a) Except to the extent otherwise expressly provided herein, the Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Kailua View Estates Restrictions upon other Owners or upon any property within the Kailua View Estates, and the costs of enforcement, including court costs and attorney's fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. No 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 without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default or breach involved.

(b) Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by the Kailua View Estates Restrictions upon the Kailua View Estates Association, provided, however, anything herein to the contrary notwithstanding, no Owner as such shall have any right to enter upon the property of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association except by proper legal proceedings and authority of a court having jurisdiction.

(c) Every act or omission whereby any restriction, condition or covenant of the Kailua View Estates Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraphs (a) and (b) above, provided, however, that any provision to the contrary notwithstanding 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) Each remedy provided for in the Kailua View Estates Restrictions is cumulative and non-exclusive.

(e) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Kailua View Estates Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provisions of the Kailua View Estates Restrictions in another case against or with respect to the same Owner or lot or any other Owner or lot.

Section 7.03. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

(a) All of the limitations, restrictions, covenants and conditions of the Kailua View Estates Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of Kailua View Estates as set forth in the introductory paragraphs of this Declaration.

(b) No provision of the Kailua View Estates 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 Kailua View Estates or any part thereof. Anything in the Kailua View Estates Restrictions to the contrary notwithstanding, if all uses to which a lot may be put under the provisions of the Kailua View Estates Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Kailua View Estates Restrictions which can lawfully apply to the lot as so used.

(c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of Kailua View Estates shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitations, restrictions, covenants or conditions 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 each include the masculine, feminine or neuter as the context requires.

(e) All titles used in the Kailua View Estates Restrictions, 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 the Kailua View Estates Restrictions.

Section 7.04. Subdivision and Consolidation.

(a) No lot within Kailua view Estates shall be subdivided by any Owner, unless the same has been first approved by the Design Committee to which application shall be made, together with a reasonable fee as required by the Design Committee. The Design Committee shall review the same to determine whether or not the same complies with the basic intent and purposes of the Kailua View Estates Restrictions and to determine whether or not any Owner or the Owners of lots within Kailua View Estates will be prejudiced as a result of such subdivision. The Design committee shall approve or disapprove the same within thirty (30) days after such subdivision map has been submitted to it and in the event of disapproval shall give written notice of the reasons herefor. Failure to disapprove within

said period of thirty (30) days shall be deemed approval thereof. The Design Committee shall furnish to the Owner of any map which has been approved on his request a certificate executed by one of the members thereof, stating that the map has been so approved.

(b) No two or more lots within Kailua View Estates shall be consolidated into one lot by the Owner or Owners thereof without the approval of the Design Committee in the manner set forth in paragraph (a) above.

(c) The provisions of section 4.08 shall be applicable to this section 7.04 also.

(d) Nothing contained in this paragraph 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 7.05. Conveyance of Common Area;
Reservation of Easements and Rights-of-Way and Classification
of Land Area, Sewer & Water system.**

(a) The Association shall accept all of the real property and interests in real property conveyed to it as common area by 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 real property taxes and assessments non-delinquent;

(2) such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant or granted to any Owner in accordance with the provisions of the Kailua View Estates Restrictions;

(3) such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant for access to real property contiguous to the common area, and such easements and rights-of-way on, over or under all or any part thereof 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 County of Hawaii, or any other political subdivision or public organization, any public utility corporation, or any lot for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder at any time or at any time in the future, (aa) roads, streets, driveways, walks, parkways and park areas,

(bb) poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for necessary facilities in connection therewith, and (cc) public and 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 in connection therewith;

(4) the obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the County of Hawaii or any other political subdivision or political or governmental organization having jurisdiction over such property;

(5) the rights reserved to the Declarant pursuant to paragraph (d) of Section 7.05;

(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 any kind whatsoever (other than of a type which would at any time or from time to time create a lien upon such properties 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) The land classification of any property within Kailua View Estates which is not a common area may be changed to a common area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property. Notwithstanding anything else herein, the Declarant may change the land classification of any property not previously designated as common area as to which it is the Owner and may convey such property to the Association pursuant to the provisions of section 7.05(a) hereinabove, and the Association shall accept the same and such property shall thereupon become common area for all purposes hereunder.

(c) At any time and from time to time following conveyance of common area by the Declarant to the Association pursuant to this section, the Declarant may construct, reconstruct, refinish or alter any improvement upon or make or create any excavation on or fill upon or 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 (i) is reasonably necessary for any utility installation serving any property within Kailua view Estates, (ii) is reasonably necessary for the construction of any facility for use by the Owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such common area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of Kailua View Estates.

Section 7.06. Assignment of Powers.

Any and all of the rights and powers vested in the Declarant pursuant to the Kailua View Estates Restrictions 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 7.07. Condemnation of Common Area.

If at any time or from time to time all or any 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 or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

Section 7.08. Obligations of Owners, Avoidance,

Termination.

(a) No Owner through his 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 the Kailua View Estates Restrictions by virtue of his being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a 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 the Kailua View Estates Restrictions following the date of such termination.

Section 7.09. Notices, Documents, Delivery.

(a) Any notice or other document permitted or required by the Kailua View Estates Restrictions to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Kailua View Estates Association at the address designated by the Association from time to time by written notice to the Owners, and shall be deemed to have been delivered to the Design Committee twenty-four (24) hours after a copy of the same has been deposited in the same manner addressed to the Design Committee in care of the Kailua View Estates Association at the latter's then current address.

The post office address of an Owner shall be the street address in Kailua View Estates of such Owner, and delivery by mail shall be deemed complete to an Owner twenty-four (24) hours after a copy of the same 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 Design Committee shall be deemed adequate delivery to the Design Committee.

(c) Where there is more than one Owner of a lot the delivery personally or by mail to any Owner shall be effective delivery to all Owners of such lots.

(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 7.10. Duration.

The limitations, restrictions, covenants and conditions of Kailua View Estates Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Kailua View Estates, to the Owners and to the Association, for a period of twenty-one (21) years following the date of recordation of this Declaration, provided, however, that unless within one (1) year prior to the expiration of said twenty-one (21) year period, there shall be recorded an instrument directing the termination of the Kailua View Estates Restrictions signed by the Owners of not less than

two-thirds (2/3rds) of the lots within the Kailua View Estates, the Kailua View Estates Restrictions then in effect immediately prior to the expiration date shall, be continued automatically without further notice for an additional period of ten (10) years, and thereafter for successive periods of ten (10) years each unless, within one (1) year prior to the expiration of any such period, the Kailua View Estates Restrictions shall be terminated as set forth above in this paragraph.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year' first above written.

TAIYO FUDOSAN KOGYO COMPANY, LTD
By PACIFIC BASINS RESORTS, INC.
Its Attorney-in-fact

(SEAL) By /s/ Alan K. Eaida
ALAN K. HAIDA
Its President

CITY AND COUNTY OF HONOLULU)
 ;
STATE OF HAWAII)

SS

On this 29th day of May, 1979, before me personally appeared ALAN K. HAIDA, President of PACIFIC BASIN RESORTS, INC., to me personally known, who, being by me duly sworn, did say that PACIFIC BASIN RESORTS, INC. is the attorney-in-fact of TAIYO FUDOSAN KOGYO COMPANY, LTD., duly appointed under power of attorney dated December 29, 1975, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 11189 at Page 38; that the foregoing instrument was executed in the name and behalf of said TAIYO FUDOSAN KOGYO COMPANY, LTD. by said PACIFIC BASIN RESORTS, INC. as its attorney-in-fact; and that the seal affixed to the foregoing instrument is the corporate seal of the said attorney-in-fact PACIFIC BASIN RESORTS, INC.; that the instrument was signed and sealed in behalf of said TAIYO FUDOSAN KOGYO COMPANY, LTD. by authority of its attorney-in-fact PACIFIC BASIN RESORTS, INC.; and said ALAN K. HAIDA acknowledged *said* instrument to be the free act and deed of said TAIYO FUDOSAN KOGYO COMPANY, LTD.

/s/ Sharen A. Serikaku
Notary Public, State of Hawaii,

My commission expires: September 15, 1979

EXHIBIT "A"

FIRST: All of those certain parcels of land situate at Auhaukaea 2nd, District of North Kona, Island, County and State of Hawaii, described as follows:

Lots 12 to 63, inclusive, as shown on Map 2;
Lots 66 to 105, inclusive, as shown on Map 3; and
Lots 107 to 15-2, inclusive, as shown on Map 4;

All of said Maps being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1874 (amended), and being portions of the premises described in Transfer Certificate of Title No. 205,412.

SECOND: All of those certain parcels of land situate at Auhaukaea, District of North Kona, Island, County and State of Hawaii, described as follows;

(a) Lots 1 to 67, inclusive, of Kailua View Estates, Unit I, as shown on File Plan No. 1624.

(b) Lots 1 to 42, inclusive, of Kailua View Estates, Unit II, as shown on File Plan No. 1651;
and

(c) Lots 1 to 29, inclusive, of Kailua View Estates, Unit III, as shown on File plan No. 1670:

All of said File plans being recorded in the Bureau of Conveyances of the State of Hawaii, and being a portion of the premises described in that certain Deed dated September 17, 1973, recorded in said Bureau in Liber 9508, at Page 367.

[Reformatted and Reprinted August 2019]