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STATE OF HAWAII

BUREAU OF CONVEYANCES

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PAUL H. SAID

**FUKUTANI, SAITO, KIMATSUGARA & MARSHALL**

Suite 600, Central Pacific Plaza  
200 South King Street  
Honolulu, Hawaii 96813

TITLE OF DOCUMENT:

DECLARATION OF PROTECTIVE COVENANTS FOR KA ONO ULU ESTATES

PARTIES TO DOCUMENT:

Declarant: HORITA-MAUI, INC., a Hawaii corporation

PROPERTY DESCRIPTION:

LIBER/PAGE:

Waiakoa and Waiohuli-Keokea,  
Wailuku, Island and County  
of Maui, TMK Nos. 3-9-1-15(2),  
3-9-1-148(2), and 3-9-1-149(2).

TRANSFER CERTIFICATE OF  
TITLE NO(S):

DECLARATION OF PROTECTIVE COVENANTS  
FOR KA ONO ULU ESTATES

THIS DECLARATION made this 27<sup>th</sup> day of February,  
1992, by HORITA-MAUI, INC., a Hawaii corporation, with

principal place of business and post office address at 2024 North King Street, Honolulu, City and County of Honolulu, State of Hawaii, hereinafter referred to as the "DECLARANT",

**W I T N E S S E T H   T H A T :**

WHEREAS, Declarant is the owner of certain fee simple property situated at Waiohuli-Keokea, Wailuku, Island and County of Maui, State of Hawaii, described in EXHIBIT "A" attached hereto and by reference made a part hereof, hereinafter referred to as the "KA ONO ULU ESTATES";

WHEREAS, Declarant intends to develop said KA ONO ULU ESTATES and any properties annexed to KA ONO ULU ESTATES in the future, as a planned residential community which will include a variety of residential units, townhouses, parks and open areas, so as to provide a complete community that will grow and intensify in its uses, densities and activities.

WHEREAS, in order to insure the orderly and proper development and use of KA ONO ULU ESTATES in relation to the development and use of the premises as a whole and to promote a high type and quality of improvement and use of KA ONO ULU ESTATES, Declarant desired to subject all of the premises to certain mutual covenants, conditions limitations and restrictions as set forth in the Declaration of Protective Covenants for KA ONO ULU ESTATES as set forth in this Declaration of Protective Covenants for KA ONO ULU ESTATES, hereinafter referred to as "Declaration", which will inure to the benefit of all present and future owners of property within KA ONO ULU ESTATES as a whole.

NOW THEREFORE, Declarant hereby declares that all of the fee simple premises upon which KA ONO ULU ESTATES will be developed and more particularly described in EXHIBIT "A", and any real property annexed thereto, shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing, protecting and preserving the value, desirability and attractiveness of KA ONO ULU ESTATES and to be for the direct, mutual and reciprocal benefit of each and every part of KA ONO ULU ESTATES. Said limitations, covenants, conditions and restrictions shall create mutual equitable servitudes upon each lot or site in KA ONO ULU ESTATES in favor of every other lot or site in KA ONO ULU ESTATES and shall create reciprocal rights and obligations in, between and among all persons and/or

entities having any right, title or interest in and to KA ONO ULU ESTATES or any part thereof. In addition, said limitations, covenants, conditions and restrictions shall operate as covenants running with the land, binding according to the terms hereof on all persons and/or entities having or acquiring any right, title or interest in KA ONO ULU ESTATES or any part thereof.

## ARTICLE I

### DEFINITIONS

Unless the context of the particular provisions otherwise specifies or requires, the terms defined in this Article I shall have for the purpose of this Declaration the meanings hereinafter specified.

**APARTMENT** shall mean a residential unit within a building containing two or more apartments or shall mean a residential unit within a condominium property regime defined under Chapter 514A of the Hawaii Revised Statutes.

**ARCHITECT** shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes, as amended, or a person not registered to practice architecture but with architectural qualification, experience and expertise acceptable to Declarant or the Association.

**ARTICLES** shall mean the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 415B of the Hawaii Revised Statutes, as amended.

**ASSOCIATION** shall mean the KA ONO ULU ESTATES COMMUNITY ASSOCIATION, a non-profit corporation described in Article V and its successors.

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

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

**COMMON AREA** shall mean all of the property which has been conveyed in fee or otherwise to the Association, pursuant to the provisions hereinafter set forth, and all of the property designated as Common Area by the Declarant.

CONDOMINIUM shall mean a condominium property regime as defined in Chapter 514A of the Hawaii Revised Statutes, as amended from time to time.

DECLARATION shall mean this Declaration of Protective Covenants for KA ONO ULU ESTATES, and may also be referred as Community Protective Covenants or Protective Covenants or KA ONO ULU ESTATES Declaration or KA ONO ULU ESTATES Protective Covenants.

DESIGN COMMITTEE shall mean the committee created pursuant to Article IV.

DESIGN COMMITTEE RULES shall mean those rules adopted by the Design Committee pursuant to subsection 4.01(f).

DEVELOPMENT WALL shall mean any hedge, fence, wall or any combination thereof along any street boundary of a Lot erected by Declarant prior to the date such Lot is first conveyed by the Declarant to an Owner.

ENGINEER shall mean a person registered to perform engineering services in the State of Hawaii, under the authority of Chapter 464 of the Hawaii Revised Statutes, as amended, or a person with comparable qualification, experience and expertise approved by Declarant or the Association.

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

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

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

FILL shall mean any addition of rock or earth materials to the land (except temporarily for planting) which

increases the previous elevation of the land by more than eighteen inches.

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

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

KA ONO ULU ESTATES shall mean all of the real property referred to in Article II and also referred to as KA ONO ULU COMMUNITY or Community.

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

LOT shall mean any lot in KA ONO ULU ESTATES created by legal subdivision and designated on a duly filed Subdivision Map. Any reference to Lot shall also mean and include any Condominium.

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

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

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

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

RESIDENTIAL AREA shall mean any real property designated as such pursuant to Article III, together with all improvements constructed thereon, which is developed to provide Lots for sale to Owners as single family residences.

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

SPECIAL ASSESSMENT shall mean any assessment levied pursuant to Section 6.02 and Section 5.04(d) or as otherwise provided herein.

SUBDIVIDED shall mean the division of any Lot into two or more Lots, Apartments or residential units.

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

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 from the ground elevation of any adjoining property, including Common Areas and streets but excluding contiguous property owned by the Owner of the property involved, where such adjoining property has a ground elevation equal to the lower of its actual elevation or the highest elevation of the ground of the property upon which such object or activity is located.

## ARTICLE II

### PROPERTY SUBJECT TO PROTECTIVE COVENANTS

Section 2.01. All of the fee simple property comprising KA ONO ULU ESTATES containing 100.065 acres, more or less, more particularly described in EXHIBIT "A" attached hereto and made a part hereof, shall be subject to the provisions of this Declaration, and the same (and each Lot therein) shall be held, sold, conveyed, encumbered, leased, occupied and improved subject thereto. Said property, together with such other real property from time to time annexed thereto and made subject to the Declaration pursuant to Section 2.02 shall constitute KA ONO ULU ESTATES.

Section 2.02. Annexation of Property to KA ONO ULU ESTATES. The Declarant may, pursuant to the following provisions of this section, from time to time and in its sole discretion, annex to KA ONO ULU ESTATES all or any part of the real property (not then constituting a part of KA ONO ULU ESTATES) owned by it at the time of such annexation and situated at Kaonoulu (Kihei), Wailuku and Makawao, Island and County of Maui, State of Hawaii. The Association may also annex adjacent property upon approval by an affirmative vote of 3/4th of the total votes in each class of membership, at a meeting duly called for this purpose, written notice of which shall have been sent to all members not less than 30 days in advance of the meeting, setting forth the purpose of the meeting.

(a) The annexation of such property shall become effective when and only when the last of each of the following events 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 which is to be annexed to KA ONO ULU ESTATES; (bb) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to such property as provided in Section 2.03 below; and (cc) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the provisions of this Declaration; and

(2) With respect to the real property described in such declaration, 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 KA ONO ULU ESTATES.

Section 2.03. Amendment of Restrictions as Affecting Property Prior to Conveyance of Same by Declarant. Any provision of this Declaration to the contrary notwithstanding, the Declarant may from time to time and in its sole discretion amend, repeal, add to or limit the effect of any specified covenant, condition, limitation or restriction hereinafter set forth in Articles III and IV with respect to any real property in KA ONO ULU ESTATES owned by the Declarant. In order to make effective any such change with respect to any such property,

the Declarant shall record a declaration consisting of one or more documents which, among other things:

(a) describes the real property with respect to which the change shall be effective;

(b) sets forth or refers to the amendment, repeal, addition to or limitation of the covenants, conditions, restrictions or limitations to be effective with respect to such property; and

(c) declares that such changes shall be effective only with respect to such property, and that except as set forth in such declaration, this Declaration shall remain in full force and effect.

Section 2.04. Additional Covenants, Conditions, Limitations and Restrictions Established by Conveyance. No provision contained in this Declaration shall be deemed to limit or impair the right of the Declarant to add additional covenants, conditions, limitations or restrictions as affecting any real property owned by the Declarant within KA ONO ULU ESTATES by adding such additional covenants, conditions, limitations or restrictions in any deed or other document of conveyance of such property to the prospective Owner thereof.

Section 2.05. Property Subject to these Protective Covenants. No property, except for that property described in said Exhibit "A" and except for property specifically added to KA ONO ULU ESTATES pursuant to this Article II, shall be deemed subject to the provisions of this Declaration, whether or not shown on any Subdivision Map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject to the provisions of this Declaration or any amendment thereto or any property it may now own or hereafter acquire, other than the property described in EXHIBIT "A".

Section 2.06. Reservation to Exclude From These Protective Covenants. Declarant reserves the right to exclude from the operation and effect of the provisions of this Declaration any development phase which is isolated or separated from the rest of KA ONO ULU ESTATES by natural features, such as cliffs, ravines, gullies and streams, or by land use, political, governmental or legal boundaries, such as zoning so that such incremental phase should not be assimilated



or be made a coherent part of the KA ONO ULU ESTATES including but not limited to any phase set aside for residential condominium apartment development, abandoned park sites and phases along the fringe areas of KA ONO ULU ESTATES or such area as may be determined not economically feasible by Declarant for inclusion within KA ONO ULU ESTATES. Declarant also reserves the right to exclude from the operation and effect of the provisions contained in this Declaration any area described in Section 3.05.

### ARTICLE III

#### LAND CLASSIFICATIONS AND APPLICABLE RESTRICTIONS

Section 3.01. Land Classifications. All Lots within KA ONO ULU ESTATES shall be classified into one of the following classifications:

- (a) Residential Area;
- (b) Apartment Area;
- (c) Property Owned by Government Instrumentalities, Public Utilities, Eleemosynary, Religious, Educational, Community and Civic Organizations;
- (d) Commercial and Industrial sites; and
- (e) Common Area.

The classification of such Lots as aforesaid or as may be revised by the Declarant hereafter shall be established by the Declarant and shall be indicated and/or shown on documents and/or maps on file in the Office of the Department of Public Works, Land Use and Codes Administration of the County of Maui.

Section 3.02. Residential and Apartment Areas: Specific Uses and Restrictions. Each Lot in any Residential and Apartment Area shall be for the exclusive use and benefit of the Owner thereof, subject, however, to the following:

- (a) The rights of the Association or its duly authorized agents, with respect to each Lot, as provided for in Article V;
- (b) That no improvement or other work which in any way alters any Lot from its natural or improved state existing on the date such Lot was first conveyed by the Declarant to an

Owner, shall be made or done except upon strict compliance with the provisions of Section 4.02;

(c) That unless otherwise permitted by the Association or this Declaration, each Lot shall be used exclusively for residential purposes, provided, however, that nothing in this paragraph (c) shall be deemed to prevent the leasing or renting of any Lot from time to time by the Owner thereof for residential purposes only and not for transient accommodation purposes. Apartment house dwellings must be occupied on a long term residential basis which is defined by the Maui County Code as "a continuous period of six (6) months or more per year";

(d) That each Lot and any and all improvements located thereon, except those improvements designated as "Common Areas", shall be kept and maintained by the Owner thereof in good repair, clean condition and in such manner as not to create any fire, safety or health hazard in KA ONO ULU ESTATES or any part hereof, all at the Owner's sole cost and expense. Such Lots shall be landscaped and kept reasonably free of weeds of which said groundcover shall not exceed more than "6" inches in height nor shall any plants, shrubbery, trees, and other vegetation on such Lot be of nuisance to neighboring properties;

(e) That the Owner of each Lot containing a Development Wall shall maintain in good repair said Development Wall and will also maintain the adjacent area to said Development Wall on said Owner's Lot from the base of said Development Wall within two feet of any common boundary;

(f) That no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements thereon, shall be placed or used upon any Lot;

(g) That no animals shall be kept and/or maintained on any Lot unless under the following conditions: (1) Only a reasonable number of suitable domesticated house pets shall be kept for the Owner's companionship and not for consumption, sale or other commercial purposes. No fowl, other than canaries, parakeets, and other songbirds shall be maintained on any Lot. No animal which is or may be a nuisance to neighbors shall be kept and/or maintained on any Lot;

(h) That 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 law or legal proceedings;

(2) residential identification signs of a combined total face area of two (2) square feet or less;

(3) during time of construction of any residence or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen; and

(4) not more than one "For Sale" or "For Rent" sign having a maximum face area of five (5) square feet, such sign to refer only to the premises on which it is situated.

(i) That no house-trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any Lot at any time; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed six (6) months, which are used exclusively in connection with and during the construction of any work on or improvement to said Lot as permitted under Section 4.02;

(j) That no truck with more than one ton of payload capacity or construction equipment of any kind shall be kept, placed or maintained upon any Lot or upon any public or private road so as to be visible from neighboring properties or adjoining streets; provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed six (6) months, which is used exclusively in connection with and during the construction of any work on or improvement to said Lot as permitted under Section 4.02;

(k) That no accessory structures or buildings shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure of the residential unit(s) on said Lot; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for six (6) months, which are used exclusively in connection with and during the construction of the main structure of the residential unit(s);

(l) That no trailer, truck, automobile, boat or other vehicle shall be constructed, reconstructed or repaired upon any Lot or upon any public or private road in such a manner that such construction, reconstruction or repair is visible from neighboring properties, and that vehicles not in operating condition shall not be kept or maintained upon any Lot or upon any public or private road so as to be visible from neighboring properties or adjoining streets; provided that nothing in this paragraph shall prevent an Owner from performing maintenance work and minor repairs on said Owner's own trailer, truck, automobile, boat or other vehicle in said Owner's garage;

(m) That no garbage, trash or other refuse matter shall be kept on any Lot, except in closed receptacles screened from view from any street, and that no accumulated waste plant material shall be kept on any Lot, except as part of an established compost pile maintained in such a manner so as not to be visible and not to create odors noticeable from neighboring properties or except suitably bundled, tied and otherwise secured to permit disposal thereof by refuse collectors;

(n) That no open storage of furniture, fixtures, appliances and other goods and chattels shall be permitted on any Lot and that no washing or drying machines, outside clothes lines or other outside clothes drying or airing facilities shall be maintained on any Lot unless the same is screened from view and is not visible from neighboring property or streets;

(o) That there is no open burning or any other exterior fires permitted on any Lot, except barbecue fires, and that no Owner shall permit any condition on said Owner's Lot which creates a fire or health hazard or nuisance to neighboring properties;

(p) That vehicular access shall not be permitted from any Lot to a street over a boundary that is indicated on the Subdivision Map covering such Lot to have restricted access or over any strip of Common Area lying between the boundary of a Lot and a public street (except where such access over such Common Area is the only access from the Lot to any public street and an easement has been obtained from the Association), and that the Owner of such Lot may not cut any curb along any street adjacent to such boundary or Common Area;

(q) That no Owner of a Lot shall park said Owner's car or permit said Owner's Family, invitees and guests to park their cars on any public park or sidewalk area or any Common

Area or on any portion of said Owner's Lot visible from a street, except in a garage or carport on a paved driveway area or in a designated parking area or on a public roadway;

(r) That the Owner of a Lot shall not violate or permit the violation on said Owner's Lot of any applicable law or ordinance including those ordinances pertaining to zoning, buildings, fires, signs or other matters relating to the use and development of said Owner's Lot;

(s) That a garage or carport or designated parking area shall not be used for any other purpose other than the parking of vehicle and boats, unless the same be enclosed by a partition, wall, door or screen, and is normally kept closed; provided specifically that a garage or carport which is not so enclosed shall not be used for laundry or for storage purposes or converted for habitation use; and

(t) That all Lots within KA ONO ULU ESTATES shall be subject to such easements and rights of way Declarant deems necessary or convenient for the successive incremental development of additions to KA ONO ULU ESTATES. In addition:

(1) Declarant hereby reserves for itself and its designees, (which may include without limitation, the County of Maui and any utility) blanket easements upon, across, over, and under all of the Common Areas and each Lot for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, walkways, altering drainage and water flow and for all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of any properties that may be annexed in accordance with Article II of this Declaration. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association, or the Declarant, and shall proceed with its installation and maintenance activities as promptly and expeditiously as reasonably possible, and shall restore the surface to its original condition as soon as possible after completion of its work.

(2) Declarant hereby reserves to itself and for Owners in all future phases, a perpetual easement and right-of-way for access over, upon and across KA ONO ULU ESTATES for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way must be approved and documented by Declarant or the Association by recorded instruments.

Section 3.03. Condominium Apartment Area. In addition to the provisions of Section 3.02 above:

(a) The Apartment Areas designated by Declarant for residential condominium apartment development ("Condominium Apartment Areas") will be submitted to a Condominium Property Regime established under the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, establishing thereunder a declaration for the ownership of individual condominium apartment units subject to the provisions, covenants, restrictions, limitations, conditions and uses to which the premises may be put as set forth in said declaration ("Condominium Declaration"), and to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject thereto.

(b) There will be appurtenant to each Apartment within each Condominium Apartment Area thereby established common elements for the use and enjoyment of the respective Owners of Apartments within said area.

(c) The development, establishment, operation and maintenance of each of the Condominium Apartment Areas shall be in accordance with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended from time to time, and this Declaration.

(d) Declarant reserves the right and option at Declarant's sole discretion to require the consolidation and merger of the incremental phases of any condominium development within any particular Condominium Apartment Area or between or among separate Condominium Apartment Areas to enhance the economics, desirability and attractiveness of said area(s) and to allow said area(s) to be controlled and administered by a single condominium association.

Section 3.04. Common Area: Specific Uses and 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 be appurtenant to and shall pass with title to every Lot, subject, however, to the following limitations and restrictions:

(a) The use of the Common Area shall be subject to the KA ONO ULU ESTATES Community Association 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 of Declarant, 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 or Declarant.

(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 Section 4.03.

(d) Except to the extent otherwise permitted pursuant to the provisions of Section 3.04(a) above and Section 4.03 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 the Common Area), including, without limitation, the following:

(1) There shall be no camping in the Common Area, except as permitted by the Board by written permit.

(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 KA ONO ULU ESTATES, and cooking and campfires in proper enclosures in picnic or other areas within recreational facilities developed therefor by the Association or pursuant to any Condominium Declaration.

(3) No animals shall be permitted on the Common Area except pets allowed by this Declaration when accompanied by and under the control of the Owners to whom they belong, including but not limited to, placing said pets on a leash.

All Owners shall clean up any waste or other materials created by said pets, including any bodily wastes.

(e) The rights to use and enjoy the Common Area shall extend to the members of the Families of all Owners and to their invitees; provided, however, that in the event the Owner is a corporation or partnership, the Common Area, including all recreational areas, shall be restricted to such Owners or persons actually residing or occupying a Lot.

Section 3.05. Property Owned by Government Instrumentalities, Public Utilities, Eleemosynary, Religious, Educational, Community and Civic Organizations.

(a) The conditions, limitations and restrictions on the use, occupancy and improvement of property set forth in this Article III and Article IV shall not apply to any Lot or other area while and so long as the same is owned by or leased to the State of Hawaii, the County of Maui, or any government agency or instrumentality, public utility, eleemosynary institution, religious or educational institution, or community or civic organization (other than the Association or any Condominium Association) and is used for public, governmental, public utility, charitable, religious, educational, community or civic purpose, if and to the extent, but only to the extent, that such conditions, limitations and restrictions prevent reasonable use of such Lot or area for said purposes. All conditions, limitations and restrictions not so preventing such reasonable use shall continue to apply, including without limitation, the requirements of Design Committee approval for improvements proposed to be made. On cessation of such use, the conditions, limitations and restrictions of this Article III and Article IV shall be applicable in their entirety.

(b) 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 conditions, limitations or restrictions in this Article III or Article IV, if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of said Lot or area by the State of Hawaii, the County of Maui, or any governmental agency or instrumentality, public utility, eleemosynary institution, religious, or educational institution, or community or civic organization as aforesaid.

(c) The State of Hawaii, the County of Maui, any governmental agency or instrumentality or any public utility shall have no right to vote as a member of the Association and



shall not be liable for any assessments under the provisions of Article VI.

(d) Eleemosynary institutions, religious or educational institutions and community and civic organizations shall be entitled to vote as members of the Association and shall be liable for assessments under the provisions of Article VI.

Section 3.06. Commercial and Industrial Sites.

The Declarant may designate specific Lots or areas for commercial or industrial use ("Commercial and Industrial Sites"), subject to governmental approval.

(a) The conditions, limitations and restrictions on the use, occupancy and improvement of property set forth in this Article III and Article IV shall not apply to any Commercial and Industrial Sites or other areas so designated while and so long as the same area used for commercial and/or industrial purposes. On cessation of such use, the conditions, limitations and restrictions of this Article III and Article IV shall be applicable in their entirety.

(b) 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 conditions, limitations or restrictions in this Article III or Article IV, if in its discretion, such waiver shall be necessary or advisable to effectuate the sale or lease of said Lot or area to a prospective purchaser, or lessee approved by the Declarant, for commercial or industrial use.

(c) The Owner of any Commercial and Industrial Site or any other Lot or area used for commercial and/or industrial purposes shall be a member and shall have a right to vote as a member of the Association and shall be liable for any assessments under the provisions of Article VI.

ARTICLE IV

IMPROVEMENT OF PROPERTY

Section 4.01. Design Committee: Establishment, Organization; Rights; Powers and Duties.

(a) There shall be a Design Committee, the function of which shall be to oversee and exercise control over the

improvement of property in KA ONO ULU ESTATES, all designs and plans for improvements on any Lot, including, without limitation, all landscaping plans, all for the purpose of maintaining the standards and plan of development in KA ONO ULU ESTATES;

(b) The Design Committee may consist of one or more (but not more than three (3)) regular members and may include one (1) alternate. One regular member may be an Engineer or an Architect and who shall be designated the "Professional Member". Except for the members selected by the Declarant pursuant to Section 4.01(c)(1) and the Professional Member, the members of the Design Committee shall be Owners resident at KA ONO ULU ESTATES. The initial members of the Design Committee shall be:

Howard Y. Murai

Kelley G.A. Nakano

Colleen M. Chang

(Alternate)

and each shall remain a member until such time as he or she resigns or he or she has been removed and his or her successor appointed as set forth in paragraph (c) below. The number of members to the Design Committee may be increased by majority vote of the Board at a duly convened meeting or by the Declarant. Any member appointed to the Design Committee may resign at any time by giving written notice to whomever then has the power of his or her appointment or removal. Unless otherwise authorized by the Board, the members (other than the Professional Member) of the Design Committee shall not receive compensation for services rendered; provided, however, all members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties. The Professional Member of the Design Committee shall be compensated for his or her services as may be approved by the Board.

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

(1) for the first five (5) years following the date of execution of this Declaration, the right to appoint and remove all members shall be reserved to and be vested solely in the Declarant;

(2) from and after five (5) years from the date of execution of this Declaration, the Association shall have the right to replace one member previously appointed by the Declarant, other than the Professional Member, and thereafter to remove and appoint his successors; and the Declarant shall retain the right to appoint the remaining Design Committee members including the Professional Member;

(3) from and after ten (10) years from the date of execution of this Declaration, the Association shall have the sole right to appoint and remove all members and may replace any member previously appointed by the Declarant;

(4) if the Declarant should fail to exercise its then existing right to appoint or remove members after an unreasonable period of time or gives written notice to the Association of its intention to waive such right, the Association shall thereupon have the right to appoint and remove all such members.

(d) It shall be the duty of the Design Committee to consider and act upon all such proposals or plans for the improvement or landscaping of all property in KA ONO ULU ESTATES as are submitted to it pursuant to this Declaration and to perform such other duties as may be delegated to it from time to time under this Declaration. In performing its duties, the Design Committee may, but shall not be required to, conduct a hearing or to consult personally with the persons or parties submitting proposals or plans for Design Committee approval;

(e) The Design Committee may meet from time to time as is necessary to perform its duties hereunder. The vote or written consent of a simple majority of the members of the Design Committee shall constitute authority for the Design Committee to act, unless the unanimous vote or consent of its members is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all proposals and plans submitted to it and the specific action taken with respect to each and a record of all other actions taken by the Design Committee;

(f) By unanimous vote of its members, the Design Committee may adopt, amend and repeal rules and regulations to be known as the "Design Committee Rules". Within the limits established in this Declaration, the Design Committee may establish by the Design Committee Rules:

(1) specific procedures governing the manner and method by which applications, proposals, plans and specifications for the improvement of property shall be submitted, received and processed;

(2) fees to be charged upon the submission for approval of such applications, proposals, plans and specifications;

(3) interpretive guidelines and specific interpretations of all limitations and restrictions contained in this Declaration pertaining to the design and construction of improvements, alterations, replacements and repairs, including but not limited to the materials to be used therein;

(4) interpretive guidelines and specific interpretations of all limitations and restrictions contained in this Declaration pertaining to Excavation, grading and Fill, landscaping, alteration of the natural or existing drainage of surface water, and installation of sewage, water and facilities; and

(5) to the extent practical, standards which shall be required in the construction of any residence or apartment or condominium building. A copy of the Design Committee Rules as they may be adopted, amended and repealed from time to time shall be made available at the office of the Association and the office of the Declarant for inspection during normal business hours by any Owner, architect or agent of any Owner or architect;

(g) The approval of the Design Committee of any plans and specifications for any work done or proposed or submitted in connection with any matter which requires the approval of the Design Committee, shall not constitute a waiver by the Design Committee of its right to withhold its approval of any similar plans and specifications or any other matter subsequently submitted for approval, whether or not by the same person or party;

(h) Upon the request of any Owner and payment to the Association of a fee (set by the Association), the Design Committee shall issue to the Owner a certificate certifying that as of a certain date:

(1) all improvements, landscaping and/or work made or done on the Lot of the Owner comply with the provisions of this Declaration, or

(2) such improvements, landscaping and/or work do not comply with the provisions of this Declaration. In the event such certificate indicates non-compliance with this Declaration, the certificate shall also identify the non-complying improvements and/or work and set forth the particular reasons for non-compliance. The Design Committee shall issue such certificate within (30) working days after request and payment of the application fee therefor has been made; and the certificate shall be in form suitable for recordation in the Bureau of Conveyances or filing in the Office of the Assistant Registrar of the Land Court. Any purchaser or lessee from the Owner or mortgagee or holder of any other encumbrance on the property covered by such certificate shall be entitled to rely on the certificate with respect to all matters contained therein, and such matters shall be deemed conclusive among the Association, the Declarant, the Design Committee, all Owners and the holder of any such encumbrance;

(i) Neither the Design Committee nor any member thereof shall be liable to the Association, to any Owner or to any other person for any loss, damage or prejudice suffered or alleged to be suffered as a result of any Design Committee action or the issuance of any certificate pursuant to subsection (h) above, provided that the members of the Design Committee have acted in good faith upon knowledge actually possessed by them;

(j) If for any reason the Design Committee cannot be assembled to act on a particular matter or matters then the Board of Directors of the Association may appoint one (1) regular member of the Design Committee to act on behalf of the Design Committee and who shall be able to perform the duties of the Design Committee as stated in this Declaration.

(k) Any provision in this Section 4.01 notwithstanding, the Declarant shall be exempt from the Design Committee Rules or any guidelines, interpretations or standards established thereto, and the rights, powers and duties of the Design Committee shall not be deemed to limit or affect in any way the rights of the Declarant to develop and make improvements, alterations or repairs to real property owned by the Declarant or to limit or affect the rights of persons or parties specifically exempted by the Declarant in writing to develop and make improvements, alterations or repairs to property owned by such persons or parties;

(1) Notwithstanding any provisions contained in this Declaration to the contrary, if it is deemed necessary under the circumstances, the Board of Directors of the Association shall have the authority and power to appoint one regular member of the Design Committee to act on behalf of the Design Committee in performing its stated responsibilities as provided in this Article IV.

Section 4.02. Conditions, Limitations and Restrictions on Improvement. Any improvement, alteration, repair, landscaping or other work undertaken upon any Lot in KA ONO ULU ESTATES shall be subject to the conditions, limitations and restrictions set forth below.

(a) No construction or reconstruction of any improvement or alteration, repair or refinishing of any part of the exterior of an existing improvement or any other exterior work or any landscaping shall be commenced or continued upon any Lot unless the Owner thereof first obtains the approval of the Design Committee as follows:

(1) The Owner shall submit to the Design Committee preliminary plans for the proposed work prepared by an Architect, unless otherwise permitted by the Design Committee in advance, which plans shall show in detail the nature and dimensions of the proposed improvement or work;

(2) Within forty-five (45) working days after submission of the preliminary plans, the Design Committee shall review the plans and return them to the Owner indicating its approval or disapproval. If disapproval is indicated, the general nature of the Design Committee's objections shall also be stated. The Design Committee's failure to respond within said forty-five working day period shall be deemed approval of the preliminary plan;

(3) After review of the preliminary plans has been completed and said preliminary plans are approved by the Design Committee, the Owner shall submit in duplicate to the Design Committee the final plans and specifications for the proposed improvement or work, which shall include where appropriate a plot plan showing easements, set-back lines and contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the location of all proposed utility installations, and any landscape plans, including all trees the Owner intends to plant or remove. The plans and specifications shall also indicate all exterior materials, finishes and colors to be used. Along with the

plans and specifications, the Owner shall submit the Owner's proposed construction or work schedule, and shall pay a reasonable fee for the Design Committee's inspection and review of the same.

(4) Within forty-five (45) working days after the submission of the final plans and specifications, the Design Committee shall either approve or disapprove the same in writing. Any disapproval shall also set forth the reasons for disapproval. If the Design Committee does not act within said forty-five working day period, the final plans and specifications shall be deemed approved as submitted. The Design Committee may not disapprove any aspect of the final plans and specifications which was apparent in the preliminary plans and previously approved by the Design Committee;

(5) If the final plans and specifications are disapproved by the Design Committee, the Owner may correct or modify the same based on the reasons given for disapproval by the Design Committee and resubmit the final plans and specifications, as modified, within thirty (30) working days after receiving the Design Committee's disapproval. Within thirty (30) working days after resubmission of the corrected or modified final plans and specifications, the Design Committee shall either approve or disapprove the same in writing in the same manner set forth in paragraph (4) above. If the Design Committee does not act within said thirty working day period, the corrected or modified plans shall be deemed approved as submitted.

(b) Approval of plans and specifications by the Design Committee as aforesaid shall be effective for a period of one (1) year and may be revoked if the work pursuant to such plans and specifications has not commenced within said one-year period or does not proceed in reasonable accordance with the proposed work schedule submitted by the Owner with the plans and specifications. The Design Committee shall give written notice to the Owner of revocation of approval, stating the reasons therefor, and revocation of approval shall be effective upon the giving of such notice. If such approval is revoked for untimely commencement of the work, the Owner may not commence work pursuant to the previously approved plans and specifications without first re-obtaining Design Committee approval. In such case, the Design Committee shall treat any resubmission of plans and specifications, whether or not they are identical to the plans and specifications previously approved, as a new submission and shall not be bound by any prior decision made with respect to same. The Design Committee

may also require the payment of another fee for its review and inspection. If approval is revoked for the reason that work has not proceeded in a timely manner, the Owner may not proceed with any further work pursuant to the previously approved plans and specifications without first re-obtaining the approval of the Design Committee as aforesaid. If the work is abandoned at any time prior to completion the Association may take any and all reasonable steps to have the work completed or the property restored to its pre-existing conditions and may assess the Owner for all costs and expenses incurred in connection therewith;

(c) Upon the completion of any construction, reconstruction, refinishing, alteration, repair or other work for which approved plans and specifications are required pursuant to this section, the Owner shall give written notice thereof to the Design Committee. Within thirty (30) days after such notice is given, the Design Committee shall inspect the improvements or work in order to determine whether or not there has been substantial compliance with the approved plans and specifications. If the Design Committee finds that there has not been substantial compliance with the plans and specifications, it shall notify the Owner of such non-compliance and require the Owner to remedy the same within sixty (60) days after such notice is given. If the Owner fails to remedy such non-compliance within said sixty-day period, the Association may take any and all reasonable steps to remedy the non-compliance or to restore the property to its pre-existing condition and may assess the Owner for all costs and expenses incurred in connection therewith. If the Design Committee does not notify the Owner of any non-compliance within thirty (30) days after receipt of notice of completion from the Owner, the improvements or work shall be deemed to have been completed in substantial accordance with the approved plans and specifications:

(d) Regardless of the cost or replacement value of same, the following specific conditions, limitations and restrictions shall be applicable to any improvement, alteration or repair undertaken upon any Lot;

(1) no reflection finishes shall be used on exterior surfaces (other than glass and the surfaces of hardware fixtures) if such exterior surfaces are visible from neighboring property and no glass surface shall be treated so as to render it mirror-like reflective such that it is a nuisance to neighboring properties or hazardous to vehicular traffic;



(2) all roofs, other than flat roofs, shall be covered with asphalt shakes or of material of comparable quality and texture;

(3) no metal, vinyl or plastic roofing material or wall siding shall be permitted unless the same is maintained in a non-reflective condition;

(4) no gas tanks will be permitted;

(5) all outside telephone and electric power lines, water pipe lines and all other conduits for utilities within KA ONO ULU ESTATES shall be installed underground unless for technical or physical reasons above-ground installation is necessary or advisable and is approved by the Design Committee;

(6) ~~no second-hand or used lumber or other~~ material shall be used in any construction without the prior approval of the Design Committee;

(7) any wall facing a street shall be of a permanent structure and of design and material approved by the Design Committee;

(8) no permanent exterior electric lighting of any sort shall be installed or maintained, the light source of which is visible from neighboring property and no television or radio antennas shall be erected on a Lot or the top of the roof or from any other exterior portion of any improvement to or on a Lot. No structures outside of any dwelling unit so as to be visible from neighboring property or street shall be constructed without the prior approval of the Design Committee;

(9) rain gutters shall be of a matching type for the entire dwelling unit being served;

(10) unless approved by the Design Committee, no accessory structures, such as playhouses, sheds, storage bins, dog kennels or other animal enclosures, shall be permitted;

(11) no aluminum, plastic or canvas awnings shall be erected except as approved by the Design Committee and only for a temporary period of time not to exceed seven calendar days;

(12) no part of the exterior of any dwelling unit visible from neighboring property or streets shall be unpainted

or refinished except in accordance with the original color or finish or except in colors or finishes approved by the Design Committee;

(13) no television or radio signal receiver dishes shall be installed, erected or maintained upon any Lot.

(e) In addition to the specific conditions, limitations and restrictions set forth in subsection (d) above, any improvement, alteration or repair undertaken upon any Lot in a Residential Area shall be in conformity with the following general conditions, limitations and restrictions:

(1) no more than one residential unit shall be constructed on any Lot;

(2) the improvement, alteration or repair shall be compatible and in harmony with existing structures and other improvements in the area with respect to quality and type of materials, workmanship, external design and location of the improvement, alteration or repair on the Lot, taking into account topography and ground elevation;

(3) the improvement, alteration or repair shall conform to the general plan of the entire development of KA ONO ULU ESTATES; and

(4) the improvement, alteration or repair shall not, because of its design, unreasonably interfere with the light, air or view of adjoining Lots;

(f) Unless reasonably necessary for and incident to the improvement, alteration, repair or other work undertaken upon any Lot in a Residential Area, plans for which have been approved by the Design Committee:

(1) there shall be no grading, excavation or fill undertaken upon any such Lot;

(2) there shall be no change in the natural or existing drainage or flow patterns for surface or other water upon any such Lot; and

(3) no privately installed power, telephone or other utility lines, wires or conduits which would be visible from neighboring property with respect to individual residential Lots, shall be installed upon such Lot unless

Design Committee approval is first obtained in the manner provided in subsection 4.02(a) above;

(g) In the event of any violation of the provisions of this section, the Association may take any and all reasonable steps to restore the Lot upon which such violation has occurred to its existing condition prior to the violation and may assess the Owner of such Lot for all costs and expenses incurred in connection therewith;

(h) Before submitting any design proposal to the Ka Ono Ulu Design Committee or proceeding with the conditions, limitations and restrictions set forth in subsections (a) through (g) above, Condominium Owners must first submit their design proposal to and obtain approval from the Condominium Association's Board of Directors.

~~Section 4.03. Common Area, Conditions, Limitations and Restrictions on Improvement.~~ No improvement, excavation or work which in any way alters any Common Area from its natural or existing state on the date when such Common Area was designated as such by the Declarant or 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 Section 4.03(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 upon any Common Area;

(b) Except to the extent otherwise provided in Section 4.03(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 water, 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 Section 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 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 KA ONO ULU ESTATES as planned; and

(2) The Design Committee finds that the proposed work shall not, because of its design or use, materially prejudice KA ONO ULU or any Owner therein in the use and enjoyment of said property. Such approval shall be in writing; provided, however, that plans which have neither been approved or rejected within forty-five (45) working 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 be set forth with particularity 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 of the matter, to consider 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) located on 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 designated as such by the Declarant or 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 so designated or 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 tree or any other vegetation on 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 KA ONO ULU ESTATES and of any road, 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.

## ARTICLE V

### KA ONO ULU ESTATES COMMUNITY ASSOCIATION

Section 5.01. Establishment. There shall be a non-profit corporation known as the "KA ONO ULU ESTATES Community Association" (herein referred to as the "Association") which shall be empowered with the rights and be charged with the duties, obligations and responsibilities set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws.

#### Section 5.02. Membership.

(a) Each and every person, corporation, partnership or other legal entity being the Owner of any Lot or any residential unit within a Lot (including any condominium association) within KA ONO ULU ESTATES (herein referred to as an "Owner") shall be a member of the Association;

(b) For the purposes of determining membership status in the Association, the term "Owner" of a Lot within KA ONO ULU ESTATES shall be deemed to include:

(1) an Owner of any Lot within a Residential Area (Class A Member);

(2) with regard to any Condominium Apartment Area, an "apartment owner" as that term is defined in the

Horizontal Property Regime Act, Chapter 514A, Hawaii Revised Statutes, and any condominium association (Class B Member);

(3) an Owner of any Lot within an Apartment Area (except for Condominium Apartment Areas) [Class C Member];

(4) an Owner of any Lot within KA ONO ULU ESTATES which is a private eleemosynary, religious or educational institution or community or civic organization as set forth in Section 3.05, if any (Class D Member);

(5) an Owner of any Commercial and Industrial Site (Class F Member); and

(6) the Declarant, so long as the Declarant is the Owner of any Lot within KA ONO ULU ESTATES (Class E Member);

(c) No membership shall be terminated or forfeited and no member shall be expelled, except upon transfer of said Owner's interest in KA ONO ULU ESTATES which entitles said Owner to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale or a lease for periods more than 5 years, of such interest therein, the vendor's and/or lessor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee and/or lessee, such transfer in the case of agreement of sale becoming permanent upon subsequent delivery of a deed in compliance with said agreement of sale, or reversion in the vendor in the event of termination of said agreement of sale and/or termination of the lease. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (by agreement of sale or otherwise) of said member's rights and duties as such Owner and of such Owner's interest in KA ONO ULU ESTATES, and upon payment of all his or her indebtedness to the Association on account of unpaid assessments or otherwise, and a transfer charge of a reasonable fee established by the Board of Directors, except, however, that Declarant shall be exempted from this transfer charge;

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

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

(a) Each Class A Member shall be entitled to one (1) vote for each Lot owned; provided that if more than one person or entity owns a particular Lot, all such persons or entities shall have jointly a total of one (1) vote to be exercised by one or more persons or entities designated in writing (and addressed and sent to the Association);

(b) Each Class B Member shall be entitled to a total of one (1) "Condominium Unit Vote" for each condominium apartment (as the term "apartment" is defined in Chapter 514A, Hawaii Revised Statutes, as amended from time to time) owned; provided that if more than one person or entity owns a particular condominium apartment, all such persons or entities shall have jointly only one (1) Condominium Unit Vote to be exercised by one or more persons or entities designated in writing (and addressed and sent to the Association) by all such persons and entities. The association of apartment owners (as defined in Chapter 514A) shall be a member of the Association but shall not have the right to any Condominium Unit Votes unless it is also the Owner of a condominium apartment;

(c) Each Class C Member shall be entitled to one (1) vote for each completed apartment unit owned or for each one thousand (1,000) square feet of land owned rounded to the nearest thousand whichever is applicable on the day a vote is required;

(d) The Class D Members shall not be entitled to vote;

(e) Each Class E Member shall be entitled to a total of one (1) vote for each Commercial or Industrial Unit owned or for each one thousand (1,000) square feet of land owned rounded to the nearest thousand whichever is applicable on the day a vote is required;

(f) The Class F Members (Declarant) shall be entitled to three (3) votes for each Lot owned by it (whether or not containing a residential unit) in the Residential Area and one vote for each one thousand (1,000) square feet, rounded to the nearest thousand, of every other parcel land owned by Declarant in KA ONO ULU ESTATES and which has not yet been subdivided into residential, condominium, apartment, commercial or industrial Lots;

In addition, if a Class F Member qualifies as a Class B, C or E Member, then it shall have three (3) votes per unit owned.

The Class F Membership shall cease and be converted to Class A, B or C Membership, as the case may be on December 31, 2004.

Section 5.04. Duties and Obligations to the Association. The Association shall accept, undertake and perform each of the obligations, duties and responsibilities for the repair, maintenance and improvement of KA ONO ULU ESTATES and to act on behalf of and for the benefit of the Owners, including, but not limited to, the following:

(a) The Association shall assess to and collect a monthly membership fee from each Owner who shall have taken ownership and possession, either under deed, lease or agreement of sale. The Board of Directors of the Association shall have the authority to set and adjust the monthly fee from time to time. The monthly membership fees shall be assessed according to the Owners' membership classification as determined under Section 5.03 and in proportion to their voting rights in the Association. The Association, those persons or entities specified in Sections 3.05(c), 3.05(d) and the Declarant shall be exempt from the assessment provided for in this section, under the circumstances and conditions set forth in Section 6.03 herein.

(b) The Association shall keep and manage the membership fees collected and disburse the same in such amounts and for such purposes as may be deemed necessary or appropriate by the Board.

(c) The Association shall accept, as part of KA ONO ULU ESTATES, all property annexed to KA ONO ULU ESTATES pursuant to Section 2.02 and shall accept all Owners of such additional property as members of the Association.

(d) The Association shall accept title to all Common Area and other property from time to time conveyed to it by the Declarant. The Association shall also have the authority to acquire and accept title to any property, real, personal and mixed, provided nothing herein shall be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association and profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners or other permitted persons or



entities for the use of facilities and properties of this Association.

(e) The Association shall maintain or provide for the maintenance of the Common Area 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 Area 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 Area by any Owner, but may use all legal means to force such Owner to maintain the same himself.

(f) 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 Area.

(g) The Association shall have the authority to levy special assessments upon the Owner for special services, events, or programs sponsored or managed by the Association.

(h) The Association shall from time to time make, establish, promulgate, amend and repeal the Rules of the Association, as provided for in this Declaration.

(i) To the extent provided for in this Declaration, the Association by and through its Board of Directors 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 this Declaration, to make and enter into contracts and to acquire and dispose of property, and shall take such actions, whether or not expressly authorized by this Declaration, as may reasonably be necessary to enforce this Declaration, the Association Rules and the Rules of the Design Committee.

Section 5.05. Powers and Authority of Association.  
The Association shall have all the powers set forth in its Articles of Incorporation, subject, however, to the limitations upon the exercise of such owners as are expressly set forth in its Articles of Incorporation and By-Laws and in this Declaration 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 this Declaration and which may be necessary or proper for the peace, health, comfort, safety and/or general welfare of its members. Without limitation to the generality of the foregoing, the Association shall have the following powers:

(a) Without liability to the Owner or Owners for trespass, damage or otherwise, the Association may enter upon any Lot at any time for the purpose of performing the function, duties and obligations expressly set forth in the Articles of Incorporation and By-Laws and in this Declaration.

(b) In exercising or fulfilling any of its functions, duties or obligations under this Declaration, including without limitation, all such obligations and duties set forth in Section 5.04, or to the extent necessitated by the failure or neglect of Owners of Lots in KA ONO ULU ESTATES to abide by and comply with the provisions of this Declaration or any rules and regulations adopted hereunder, the Association shall have the power and authority:

(1) to establish a meeting place for the Association and contract and pay for all obligations, commitments and agreements properly within the scope of the functions, duties and obligations of the Association deemed appropriate or proper from time to time;

(2) to obtain, maintain and pay for such insurance policies or bonds, whether or not required, as the Board may deem appropriate for the protection or benefit of KA ONO ULU ESTATES, the Association, the members of the Board of Directors, the members of the Design Committee, or the Owners, including without limitation, fire and extended coverage insurance on all improvements from time to time owned by the association and located upon or within any common area, bodily injury liability insurance, property damage liability, Directors' and Officers' Insurance, worker's compensation insurance, and fidelity and surety bonds. The authorization covering the manner of use and application of recovered funds under the policies of insurance or to negotiate loss settlement, shall be vested in the Board;

(3) to contract and pay for, or otherwise provide for utility services including without limitation, water, sewer, garbage, electrical, telephone and gas as may be required to serve the areas that may be within its jurisdiction, responsibility or supervision from time to time;

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

(5) to contract and pay for, or otherwise provide for fire prevention and other protection services as the Association shall deem necessary covering such property placed within its jurisdiction or responsibility;

(6) to contract and pay for, or otherwise provide for such materials, supplies, furniture, equipment and labor as the Association deems necessary for the operation and management of the functions, duties and obligations of the Association;

(c) The Association by and through its Board may from time to time employ the services of a manager or managing agent 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 or managing agent any of its powers under this Declaration; provided, however, that the Association may not delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$1,000.00 or for the performance of any work or services, which work or services are not to be completed within one (1) year, or 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 authority to pay, compromise or contest any or all taxes and assessments levied against said properties placed within its jurisdiction, responsibility or ownership or upon any personal property belonging to the Association.

(e) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose of, any property placed within its jurisdiction, responsibility or ownership or any other property of the Association, provided that the retention of such property is no longer necessary, advantageous or beneficial to the Association or to the Owners.

Section 5.06. KA ONO ULU ESTATES COMMUNITY Association Rules.

(a) The Board may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations known as the KA ONO ULU ESTATES Community Association Rules (hereinafter referred to as the "Association Rules") which shall govern and regulate the activities in Ka Ono Ulu Estates, including but not limited to:

- (1) The use of the Common Area, 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 KA ONO ULU ESTATES;

(b) With respect to subparagraph (a)(1) above, the Association Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of KA ONO ULU ESTATES for all Owners, their families, invitees, licensees, lessees, and guests, restrict 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 Association 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 Association Rules, as they may from time to time be adopted, amended or repealed, which has been certified by the Secretary or an Assistant Secretary of the Association, shall be filed in and available at all times at the office of the Association, and duplicate copies thereof shall be delivered to each Owner upon his or her acquisition of

a Lot. A copy of each new rule or of any amendment of an existing rule and notice or repeal of any rule shall likewise be given to each Owner at the address of his or her Lot when the same becomes effective. Upon the promulgation and filing thereof in said office, the Association Rules shall have the same force and effect as if they were set forth and were a part of this Declaration. 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 members of the Board shall be personally liable to any Owner, guest, lessee or to any other persons, including the Declarant, for any error or omission of the Association, its representations and employees, the Design Committee or the manager, provided that such member has acted in good faith upon actual knowledge possessed by him.

## ARTICLE VI

### FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund. The Association shall maintain an operating fund into which shall be deposited all monies received by the Association, whether from monthly membership fees, or any other rents, charges or fees levied by the Association. Said fund shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations and in the exercise of rights and powers under this Declaration and the Articles of Incorporation and By-Laws of the Association.

Section 6.02. Special Assessments. The Board shall levy a special assessment upon any Owner whose acts or failure or refusal to act or to otherwise comply with the provisions of this Declaration, the Association Rules or the Design Committee Rules, causes the Association to incur any expense which would not normally have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the extraordinary expense incurred and shall be due and payable to the Association when levied. Such extraordinary expenses shall be deemed to include without limitation, Engineers', Architects', attorneys' and accountants' fees when reasonably incurred by the Association.

Section 6.03. Exemptions. With respect to any land in KA ONO ULU ESTATES owned by them, the Association and those

persons or entities specified in Sections 3.05(c) and 3.05(d) shall be wholly exempt from the assessments provided for in this Article VI. In addition, the Declarant shall be wholly exempt from the assessments provided for in this Article VI with respect to all land in the Residential Areas owned by it except those lots upon which a model home has been constructed or those Lots upon which a residential unit has been constructed and can be legally occupied.

Section 6.04. Default in Payment of Assessments.

(a) Each assessment under this Article VI and each membership fee, other user fee or other rents, charges or fees levied by the Association pursuant to this Declaration upon an Owner ("Fees") shall be a separate and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any Lot, by acceptance of a deed or lease or other conveyance document therefor, whether or not it shall be so expressed in any such deed or lease or other conveyance document, shall be deemed to have covenanted and agreed to pay the same to the Association. If the Owner fails to pay such Fee or any installment hereof when due, the Owner shall be deemed in default, and the amount of the Fees not paid, together with the amount of any subsequent default, plus interest thereon at twelve percent (12%) per annum, together with all costs of collection, including reasonable attorneys' fees, shall be a lien upon the Lot or Lots owned by the Owner upon recordation by the Association of notice of such lien. Such lien shall be subject and subordinate to the lien of any first 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 the payments of assessments which became due prior to such sale, transfer or conveyance; provided, however, that 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 lien within one hundred eighty (180) days following the occurrence of such default and shall commence proceedings to enforce such lien within one hundred eighty (180) days following such recordation. Such lien may be foreclosed by suit by the Association in the manner of foreclosure of a mortgage or real property, and the Association shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid Fees shall be maintainable without

foreclosure 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) In addition to the remedies set forth in Section 6.04(a) above, if the Owner fails to pay the monthly membership fee assessed pursuant to Section 5.04(a), within ten (10) days of the due date, a reasonable late fee as determined by the Board shall be assessed against the Owner. The initial late fee shall be \$20.00 per month.

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

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

#### Section 7.01. Subdivision and Consolidation.

(a) No two or more Lots within the KA ONO ULU ESTATES shall be consolidated into one Lot by the Owner or Owners thereof without the approval of the Design Committee and pursuant to state or county law.

(b) Nothing contained in this Section 7.01 shall apply to the subdivision of any Lot owned by the Declarant or the consolidation of two or more Lots into one or more Lots by the Declarant.

Section 7.02. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegation, 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 7.03. Notice, Documents, Delivery.

(a) Delivery of any notice or other document as permitted or required by this Declaration may be accomplished either by delivery in person or by United States mail. If delivery is made by mail, delivery upon the Association or the Design Committee shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the designated agent of the Association or Design Committee at their respective addresses designated from time to time by written notice to the Owners. The post office address of an Owner shall be the current street address on Maui of such Owner (except for Declarant, which shall be its post office address on Oahu), and delivery by mail to an Owner shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

(b) Delivery to the Association's designated managing agent shall be deemed the only adequate delivery to the Association, and delivery to the Design Committee's designated managing agent shall be deemed the only 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 one of the Owners shall constitute effective delivery to all Owners of such Lot.

(d) The address of the Declarant may be changed by notice in writing delivered to the Association, and the address of the Association may be changed by notice in writing delivered to all Owners.

(e) Each Owner shall provide the Association with their current mailing address and shall continually update the Association with their then current mailing address as is necessary.

Section 7.04. Amendment or Repeal-Duration.

(a) In addition to the rights reserved the Declarant pursuant to, among others, Sections 2.02, 2.03, 2.04, 2.05 and 2.06, this Declaration or any part hereof, may be amended or repealed in the following manner:

(1) by affirmative vote of Owners having not less than seventy-five percent (75%) of the total votes of the



membership, the Owners approve the proposed amendment or amendments or the repeal of any portion or portions of this Declaration at a meeting duly called, the notice of which meeting shall have stated as a purpose the consideration of such amendment or repeal and giving the substance of the proposed amendments or indicating the provisions to be repealed, as the case may be;

And a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments of such provisions of this Declaration so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph shall be recorded; or

(2) a written instrument also setting forth in full said amendment or amendments to this Declaration, including any portion or portions thereof repealed, executed by the Owners having not less than seventy-five percent (75%) of the total votes of the membership shall be recorded;

(b) All of the limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect with respect to all property included within KA ONO ULU ESTATES, to the Owners and to the Association, for a term of 30 years, and thereafter with automatic extension for successive 10 year periods, unless amended or repealed as provided in subsection (a) above.

**Section 7.05. Enforcement; Non-Waiver.**

(a) Except as otherwise expressly provided herein, the Association shall have the right to enforce or maintain any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by or pursuant to this Declaration upon the Owner or upon any property within KA ONO ULU ESTATES. The cost of enforcement or maintenance, including court costs and attorneys' fees, shall be paid by any Owner who violates or fails to maintain any such limitation, restriction, covenant or condition or fails to pay or satisfy when due any such lien or charge. No entry upon the Lot of any Owner or other action to enforce or maintain 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. Provided, however, in the event,

upon the sole determination of the Board, any default or breach is deemed to be a common nuisance, entry upon the Lot may be made after a twenty-four (24) hour written notice to abate the nuisance and/or rectify the default or breach involved. Provided further, however, that in the event, upon the sole determination of the Board, that any default or breach is deemed an emergency, the Board shall have the right to enter upon the Lot to abate said emergency after providing reasonable notice (as determined under the circumstances).

(b) The Association shall have the right to recover in the same manner as unpaid Fees, any damages, expenses, costs, attorneys' fees, and fines assessed against an Owner, tenant, or other person by the Association as a result of any violations of the Declaration, By-Laws, Association rules, or any statute, ordinance, or requirement of any governmental entity.

(c) The Association shall have the right to impose monetary fines upon Owners, tenants, and any other persons using or coming upon KA ONO ULU ESTATES or any part thereof for violations of the Declaration, By-Laws, the Association Rules, or any statute, ordinance, or applicable requirement of any governmental entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board may authorize the managing agent, if any, to impose the aforementioned fines in accordance with such schedule. Written notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, shall be sent to all Owners and the Owners shall be allowed the opportunity to be heard thereon at the next regular meeting of the Board. Such notice shall be mailed to the owners at least 14 days in advance of the meeting.

Persons fined may appeal from the fine imposed by the Board or managing agent, if any, in accordance with rules established by the Association through the Board.

(d) Nothing contained in this Declaration shall be deemed to restrain or abridge the right of any Owner to seek abatement of any nuisance created or caused by any other Owner or to seek enforcement of the provisions hereof against any other Owner or the Association by proper legal proceedings brought in a court of competent jurisdiction.

(e) Every act or omission which results in the violation of any restriction, condition or covenant or any provisions contained in this Declaration, in whole or in part,

is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in subsections (a) and (b) above; provided, however that only the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own action without authority of a court having jurisdiction.

(f) The remedies provided for in this Declaration of Protective Covenant are cumulative and non-exclusive.

(g) The failure in any case to enforce any limitation, restriction, covenant, condition, obligation, lien or charge now or hereafter imposed by or pursuant to this Declaration shall not constitute a waiver of any right to enforce ~~the same in another case against or with respect to the~~ same Owner or Lot or any other Owner or Lot.

#### Section 7.06. Rights of Lenders.

(a) Priority of Mortgage Lien. No breach of the Declaration, nor the enforcement of any of its lien provisions, shall impair the lien of any Mortgage made in good faith and for value encumbering any Lot, but the Declaration shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

(b) Relationship with Assessment Liens. The liens provided in this Declaration for the payment of any Fee shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Fees payment becomes due.

(c) Curing Defaults. A Mortgagee, or the immediate transferee of such Mortgage, who acquires title by other than judicial foreclosure, such as deed in lieu of foreclosure or trustee's sale shall be obligated to cure any breach of the provisions of this Declaration unless said breach is non-curable or of a type which is not practical or feasible to cure. The determination as to whether a breach is non-curable or not feasible to cure shall be made in good faith by the Board.

(d) Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Association concerning the status of any loan encumbering a Lot.

(e) Payment of Premiums or Taxes by Mortgagees.

Mortgagees may at their option, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of first Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

(f) Rights of Institutional Mortgagees. Any institutional mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, and upon the payment of a reasonable cost determined by the Association, may be entitled to:

(1) Inspect the books and records of the Association during normal business hours; and

(2) Receive the annual financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(3) Receive written notification from the Association of any default in the performance of the obligations imposed by the Declaration on the Owner whose Lot is encumbered by such institutional mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to institutional Mortgagees whose written request therefor to the Association specifies the Lot or Lots to which such request relates.

(g) Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any institutional mortgage or the promissory note secured thereby, the institutional mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Association and recording in the Bureau of Conveyances or filing in the Land Court of a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular

or special meeting of the members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him or her at such time as such default is acknowledged cured in writing by the institutional mortgagee, or determined cured by a court of competent jurisdiction.

(h) Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 7.07. Construction, Compliance with Law, Severability, Singular and Plural, Titles.

(a) All of the limitations, restrictions, covenants and conditions contained in this Declaration shall be liberally construed to promote and effectuate the fundamental concept and purpose of KA ONO ULU ESTATES as set forth in the introductory paragraphs of this Declaration.

(b) No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over KA ONO ULU ESTATES or any part thereof. Anything in this Declaration to the contrary notwithstanding, if all uses to which a Lot may be put under the provisions hereof are illegal under the applicable zoning ordinances or statutes, said Lot shall remain subject to all other provisions of this Declaration which lawfully apply to the Lot.

(c) Notwithstanding the provisions of subsection (b) above, the limitations, restrictions, covenants and conditions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitation, restriction, covenant or condition shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

(e) All titles used in this Declaration, including those of Articles and Sections, are intended solely for convenience or 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 this Declaration.

(f) In the event of any conflict between any of the provisions of this Declaration and any of the provisions of the Articles of Incorporation and By-Laws of the KA ONO ULU ESTATES Community Association, the provisions of this Declaration shall control.

Section 7.08. Miscellaneous.

(a) Indemnification. The Association shall have the powers and duties of indemnification set forth in H.R.S. Section 416-35, as it may be amended from time to time, which duty of indemnification shall extend to all former, current and future officers and directors.

(b) Easements of Encroachments. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement of encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

(c) Rights of Roadside Access and Maintenance. There is hereby reserved unto Declarant, the Association, and the designees of each a right to go upon, over and across all property adjacent to a public road right-of-way within KA ONO ULU ESTATES (herein referred to as "Landscape Area") for the purpose of maintaining, repairing, and replacing all street trees, street furniture (for example, park benches), traffic signs or any other feature or item located thereon. Depending on the public road, these rights shall extend over an area varying in width from ten (10) to thirty (30) feet. The existence of this Landscape Area shall not restrict the right of any Owner to modify landscaping on the Landscape Area, provided such modification receives the prior approval of the Design Committee.

(d) Right of Entry. The Association shall have the right, but shall not be obligated, to enter into any portion of KA ONO ULU ESTATES for inspection, maintenance, emergency, security, and safety, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

(e) Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(f) Litigation. After the termination of Class F Membership (Declarant), no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by an affirmative vote of seventy-five percent (75%) of the total votes of the membership.

This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws, or rules adopted thereunder (including, without limitation, the foreclosure of liens), (b) the imposition and collection of any Fees as provided by this Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above in this Section.

(g) Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any association and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants, restrictions, and provisions or any Articles of Incorporation, By-Laws, rules and regulations, policies, or



practices adopted or carried out pursuant thereto, those of any residential or commercial association shall be subject and subordinate to this Declaration. The foregoing priorities shall apply to, but not be limited to, the liens for assessments created in favor of the Association.

(h) Security. The Association may, but shall not be obligated to, maintain or support certain activities within KA ONO ULU ESTATES designed to make KA ONO ULU ESTATES safer than they otherwise might be. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN KA ONO ULU ESTATES, HOWEVER, AND NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND DESIGN COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE DESIGN COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, TENANT, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE IMPROVEMENT AND ANY PERSONAL PROPERTY LOCATED ON ANY LOTS AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIEF UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN KA ONO ULU ESTATES, IF ANY.

(i) Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded. Nothing in this Declaration shall



be construed to require Declarant or any successor to develop any additional property in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and to carry on upon portions of the Common Area such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction or sale of such Lots; including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, as models and sales offices and for other purposes incidental to marketing and sale.

So long as construction and initial sale of Lots shall continue Declarant retains any and all rights, including, but not limited to, the creation and conveyance of any easements or encumbrances to third parties which may be necessary to the development of any and all aspects of the Project, including the condominiums.

Declarant reserves for itself and its assigns the right to vary the timing, mix, type, use, style, and number of Lots and improvements to be constructed thereon or offered in conjunction with said Lots and the materials and other such details of construction in adding phases to this Declaration. If additional uses, such as, by way of explanation and not limitation, light industrial or additional commercial, are subsequently permitted by zoning, Declarant shall have the right to add such uses to this Declaration.

So long as Declarant continues to have rights under this paragraph, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of KA ONO ULU ESTATES without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This paragraph may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

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

HORITA-MAUI, INC.,  
a Hawaii corporation

By  \_\_\_\_\_  
Its Vice President/Treas.

STATE OF HAWAII  
CITY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 27th day of February, 1992, before me personally appeared RONALD K. WATASE, to me known, being by me duly sworn, did say that he is the Vice-President/Treasurer of HORITA-MAUI, INC., a Hawaii corporation; and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said RONALD K. WATASE acknowledged said instrument to be the free act and deed of said corporation.

*Elizabeth Umetsu*  
Notary Public, State of Hawaii  
My commission expires: 9/27/93

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