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This document consists of 122 pages.

TITLE OF DOCUMENT:

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WEST HAWAII BUSINESS PARK**

PARTIES TO DOCUMENT:

DECLARANT: WEST HAWAII BUSINESS PARK LLC, a Hawaii limited liability
company

PROPERTY DESCRIPTION:

West Hawaii Business Park, situate at
Honokohau, North Kona, Hawaii

Tax Map Key Nos. (3) 7-4-8-13, -74, -76, -77, -78, and -79

Exhibit 1

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EXHIBIT LIST

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WEST HAWAII BUSINESS PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEST HAWAII BUSINESS PARK (this "**Declaration**") is made as of the date set forth on the signature page hereof by **WEST HAWAII BUSINESS PARK LLC**, a Hawaii limited liability company ("**Declarant**").

Declarant is the owner of the real property described on Exhibit "A" attached hereto and incorporated herein by reference, and approximately shown on Exhibit "A-1" attached hereto and made a part hereof. This Declaration imposes upon the Property (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement and establishes a flexible and reasonable procedure for the overall development and maintenance of the Property. In furtherance of such plan and in order to enhance the usefulness, value, desirability and attractiveness of the Property, Declarant has caused or intends to cause the West Hawaii Business Park Association, to be formed as a Hawaii non-profit corporation, to own, operate and maintain the Common Area (as defined below) and to administer and enforce the provisions of the Governing Documents (as defined below).

Declarant hereby declares that except as specifically provided herein, all of the property described in Exhibit "A" and any additional property subjected to this Declaration, shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property. Inclusion of property on the Master Plan (as defined in Article 1 below) shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor to develop such property in accordance with the Master Plan.

**ARTICLE 1
DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Affordable Housing Plan". The Housing Needs Assessment and Implementation Plan contemplated by LUC Condition No. 8, as the same may be amended from time to time.

1.2 "Archaeological Preservation Plan". That certain Interim Archaeological Preservation Plan for the Property dated January 2003 prepared by International Archaeological Research Institute, Inc., as the same may be amended from time to time.

1.3 "Area of Common Responsibility". The Common Area, together with those areas, if any, for which the Association has or assumes responsibility.

1.4 "Articles of Incorporation" or "Articles". The Articles of Incorporation of West Hawaii Business Park Association, as filed or to be filed with the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.5 "Association". West Hawaii Business Park Association, an entity existing or to be incorporated as a Hawaii non-profit corporation, its successors and/or assigns.

1.6 "Board of Directors" or "Board". The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Hawaii corporate law.

1.7 "Burial Site" or "Sites". Specific location or locations where prehistoric or historic human skeletal remains and their associated burial goods, if any, are interred, and their immediate surrounding archaeological context, as further described in the Burial Treatment Plan.

1.8 "Burial Treatment Plan". That certain Burial Treatment Plan for the Property dated November 2006, prepared by International Archaeological Research Institute, Inc., as the same may be amended from time to time; and the Declaration of Covenants, Conditions and Restrictions for Burial Treatment Plan recorded or to be recorded in the Public Records as described in or contemplated by the Burial Treatment Plan, as the same may be amended from time to time.

1.9 "Business Park/Industrial Area". The portions of the Industrial-Commercial Property designated in the Design Guidelines as "Business Park/Industrial Area".

1.10 "Business Park/Industrial Community-Wide Standard". The standard of conduct and maintenance generally prevailing throughout the Business Park/Industrial Areas of the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors with the approval of the Majority of the members of the Board that represent the Industrial-Commercial Property.

1.11 "Business Park/Industrial Design Guidelines". The portions of the Design Guidelines applicable to the Business Park/Industrial Areas.

1.12 "By-Laws". The By-Laws of West Hawaii Business Park Association, attached as Exhibit "D", as the same may be amended from time to time.

1.13 "Class "B" Control Period". The period of time during which the Class "B" Member is entitled to appoint at least a Majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.14 "Common Area". All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or other rights in for the common use and enjoyment of the Owners. For purposes of this Declaration, Common Area shall not include any portion of a Unit that an Owner thereof may designate as a common area for any purpose or in any other document unless such other document specifically declares such common area to be a Common Area within the scope of this Declaration, and Declarant or the Association accepts such area as a Common Area by an executed instrument recorded in the Public Records.

1.15 "Common Expenses". The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate.

1.16 "Community-Wide Standard". The Retail/Commercial Community-Wide Standard, the Business Park/Industrial Community-Wide Standard or the General Industrial Community-Wide Standard, as applicable.

1.17 "Covenant to Share Costs". Any agreement or contract between the Association and an owner or operator of real property adjacent to the Property for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.18 "Cultural Preservation Area". A set of protected Burial Sites and archaeological features that will be managed as a restricted area and as a native plant preserve, as further described in the Burial Treatment Plan.

1.19 "Days". Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period automatically shall be extended to the close of business on the next regular business day.

1.20 "Declarant". West Hawaii Business Park LLC, a Hawaii limited liability company, or any one or more successor, successor-in-title, or assignee who takes title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant or Co-Declarant in a recorded instrument executed by the immediately preceding Declarant. There may be more than one "Declarant" hereunder at any one time.

1.21 "Design Guidelines". The development, site planning, architecture, design, landscape and grading concepts, plans and guidelines, applicable to the General Industrial Property and/or the Industrial-Commercial Property, as the case may be, prepared or to be prepared for Declarant, and promulgated and administered pursuant to Article 9, as the same may be amended from time to time.

1.22 "Design Review Committee" or "DRC". The General Industrial Design Review Committee or the Industrial-Commercial Design Review Committee, as applicable.

1.23 "DOH". Department of Health of the State of Hawaii.

1.24 "Emergency Response Plan". The Emergency Response Plan prepared or to be prepared by Declarant as required by the Zoning Conditions, as the same may be amended from time to time.

1.25 "Existing Uses". Uses (including concrete and asphalt plants and stockpiling) within Parcel 74 that are existing as of the date of recording in the Public Records of the deed conveying fee simple title to Parcel 74 by Declarant to the Parcel 74 Owner.

1.26 "Existing Structures". Structures within Parcel 74 that are existing as of the date of recording in the Public Records of the deed conveying fee simple title to Parcel 74 by Declarant to the Parcel 74 Owner.

1.27 "General Assessment". Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.28 "General Industrial Property". That certain portion of the Property currently in the County of Hawaii (MG) General Industrial District zone, and any other portion of the Property in the General Industrial zone from time to time.

1.29 "General Industrial Community-Wide Standard". The standard of conduct and maintenance generally prevailing throughout the General Industrial Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors with the approval of the Majority of the members of the Board that represent the General Industrial Property.

1.30 "General Industrial Design Guidelines". The portions of the Design Guidelines applicable to the General Industrial Property.

1.31 "General Industrial Design Review Committee" or "GIDRC". The West Hawaii Business Park Design Review Committee appointed by the Declarant or the Board for the General Industrial Property as provided in Section 9.2 below.

1.32 "Governing Documents". This Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the LUC Order, the Zoning Ordinance, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Affordable Housing Plan, the Solid Waste Management Plan, the Emergency Response Plan, the Storm Water CC&Rs, and the rules of the Association, or any of the above, as each may be applicable to a Unit or other portion of the Property and as each may be amended from time to time.

1.33 "HAR". Hawaii Administrative Rules, as the same may be amended from time to time.

1.34 "Hazardous or Toxic Substances". Any hazardous or toxic substance, material or waste which is or becomes regulated by the United States government, the State of Hawaii and/or the County of Hawaii, including any department, agency or political subdivision thereof. Without limitation to the generality of the foregoing sentence, the term "hazardous or toxic substances" includes any material or substance that is: (a) petroleum, (b) asbestos, (c) a flammable explosive, (d) radioactive material, (e) an organic substance known as polychlorinated biphenyl, (f) any material known to cause cancer or reproductive toxicity, (g) any material or substance which is or may become regulated by applicable federal, State of Hawaii and/or local environmental laws including, without limitation, the Water Pollution Control Act (33 U.S.C. § 1321 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.

§ 9601 et seq.); Subchapter IX of the Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); HRS § 321-21 (Management and Disposal of Infectious Waste); HRS Chapter 340A (Solid Waste); HRS Chapter 340E (Safe Drinking Water); HRS 342B (Air Pollution); HRS Chapter 342D (Water Pollution); HRS Chapter 342E (Nonpoint Source Pollution Management and Control); HRS Chapter 342H (Solid Waste Pollution); HRS Chapter 342I (Special Wastes Recycling); HRS Chapter 342J (Hazardous Waste); HRS Chapter 342L (Underground Storage Tanks); HRS 342P (Asbestos and Lead), HRS Chapter 128D (Hawaii Environmental Response Law), and any similar federal, State of Hawaii or County of Hawaii laws, ordinances, rules, regulations or guidelines now existing or hereafter adopted, published and/or promulgated pursuant thereto.

1.35 “Highway Buffer Area”. Those areas designated in the Design Guidelines as the “Highway Landscape Buffer Area” along the Property’s frontage with Queen Kaahumanu Highway, as required by the LUC Conditions and the Zoning Conditions.

1.36 “HRS”. Hawaii Revised Statutes, as the same may be amended from time to time.

1.37 “Industrial-Commercial Property”. That certain portion of the Property currently in the County of Hawaii (MCX) Industrial-Commercial Mixed District zone, and any other portion of the Property in the Industrial-Commercial Mixed zone, or the zoning Districts described in Divisions 10, 11, 12 or 14 of Article 5 of the Zoning Code of the County of Hawaii, from time to time.

1.38 “Industrial-Commercial Community-Wide Standard”. The Retail/Commercial Community-Wide Standard or the Business Park/Industrial Community-Wide Standard, as applicable.

1.39 “Industrial-Commercial Design Guidelines”. The Retail/Commercial Design Guidelines or the Business Park/Industrial Design Guidelines, as applicable.

1.40 “Industrial-Commercial Design Review Committee” or “ICDRC”. The West Hawaii Business Park Design Review Committee appointed by the Declarant or the Board for the Industrial-Commercial Property as provided in Section 9.2 below.

1.41 “Interpretive Site Complex”. A set of archaeological sites set aside for public interpretation and viewing which includes a portion of a historic mauka-makai trail, a cave shelter, terraces and other features, as more particularly described in the Archaeological Preservation Plan.

1.42 “TWS/ATS”. An enhanced septic tank system or alternative treatment system described in Article 15.

1.43 “TWS/ATS Maintenance Agreement”. A maintenance agreement applicable to any IWS/ATS installed in a Unit that shall provide for safe and effective operation and

maintenance of the IWS/ATS on a Unit, whether shared or individual. The IWS/ATS Maintenance Agreement shall require a contract with a wastewater professional to regularly inspect, maintain and certify that the IWS/ATS unit(s) installed in the Unit are operating correctly.

1.44 "KAHO National Park". The Kaloko-Honokohau National Historical Park, which is located directly west of the Property, seaward of Queen Ka'ahumanu Highway, and administered by the United States National Park Service.

1.45 "Kamanu Street Extension". That portion of the Property, being Lot A-1-E, having an area of approximately 4.802 acres, as described in Exhibit A attached hereto.

1.46 "LUC Conditions". The conditions set out in the LUC Order, as such conditions may be amended from time to time, which conditions are set out in that certain Certificate of Conditions recorded in the Public Records as Document No. 2004-032728.

1.47 "LUC Order". That certain Decision and Order dated June 16, 2003 and entered on September 26, 2003, issued by the Land Use Commission of the State of Hawaii, as part of its Stipulated Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Docket No. A00-730, as such order may be amended from time to time.

1.48 "Majority". Those weighted votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

1.49 "Master Plan". The land use plan or development plan for "West Hawaii Business Park" as such plan may be amended from time to time, which includes the Property described on Exhibit "A".

1.50 "Member". A Person subject to membership in the Association pursuant to Section 3.1.

1.51 "Mortgage". A mortgage or any other form of security instrument affecting title to any Unit.

1.52 "Mortgagee". A holder of a Mortgage.

1.53 "Owner". One or more Persons who hold the record title to any Unit (including Declarant, if Declarant holds record title to any Unit), but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded agreement of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. In no event shall any Unit have, individually or collectively, more than one Owner for purposes of this Declaration, provided, however, that where an Owner consists of more than one Person, each such Person shall be jointly and severally liable for the performance of the Owner's obligations under this Declaration and notice to one such Person shall be deemed notice to all such Persons. If a Unit is submitted to a condominium property regime, all of the "unit owners" thereof as defined in Hawaii Revised Statutes Chapter 514B, as the same may be amended from time to time, shall collectively be the

Owner, and any notice to the condominium association shall be deemed notice to all such unit owners.

1.54 "Parcel 74". The approximately 12.706 acre portion of the Property described in Exhibit "B" attached hereto and made a part hereof, which Parcel contains approximately 10.001 acres of usable area (the **"Parcel 74 Usable Area"**) and approximately 2.705 acres of unusable and setback area (the **"Parcel 74 Unusable Area"**).

1.55 "Parcel 74 Owner". Blueroc Properties, LLC, a Hawaii limited liability company, or any one or more successor, successor-in-title, or assignee who takes title to any portion of Parcel 74 for the purpose of development and/or sale of Units in Parcel 74 and who is designated as the Parcel 74 Owner in an instrument executed by the immediately preceding Parcel 74 Owner and recorded in the Public Records, provided, however, that (a) there shall never be more than one "Parcel 74 Owner" hereunder at any one time, and (b) at any time, the then extant Parcel 74 Owner may waive, release and terminate the rights and privileges of the Parcel 74 Owner hereunder by an instrument executed by the Parcel 74 Owner and recorded in the Public Records.

1.56 "Person". A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.57 "Pollution Prevention Plan". That certain Pollution Prevention Plan West Hawai'i Business Park dated June 2008, prepared by Masa Fujioka & Associates, and that certain Declaration Regarding Pollution Prevention Plan for West Hawaii Business Park dated as of June 18, 2008, and recorded in the Public Records as Document No. 2008-102908, as the same may be amended from time to time.

1.58 "Property". The real property described on Exhibit "A", as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.59 "Public Records". The Bureau of Conveyances of the State of Hawaii or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.60 "Quarry Buffer Area". A setback from the edge of the quarry pit, located along the east and south boundaries of the General Industrial Property, as approximately shown on the map attached hereto as Exhibit "A-2" and further described in Section 10.18 below.

1.61 "Retail/Commercial Area". Those portions of the Industrial-Commercial Property designated in the Design Guidelines as "Retail/Commercial Area".

1.62 "Retail/Commercial Community-Wide Standard". The standard of conduct and maintenance generally prevailing throughout the Retail/Commercial Areas of the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors with the approval of the Majority of the members of the Board that represent the Industrial-Commercial Property.

1.63 "Retail/Commercial Design Guidelines". The portions of the Design Guidelines applicable to the Retail/Commercial Areas.

1.64 "Solid Waste Management Plan". That certain Solid Waste Management Plan dated August 2006, prepared by Pacific Waste Consulting Group and Nancy E. Burns, PE, LLC, as the same may be amended from time to time.

1.65 "Special Assessment". Assessments levied in accordance with Section 8.4.

1.66 "Specific Assessment". Assessments levied in accordance with Section 8.5.

1.67 "Storm Water CC&Rs". That certain Declaration of Covenants, Conditions and Restrictions for Storm Water and Surface Water Run-Off contemplated by LUC Condition No. 1.a. and recorded or to be recorded in the Public Records.

1.68 "Supplemental Declaration". An instrument filed in the Public Records pursuant to Article 7.

1.69 "Unit". A portion of the Property, whether improved or unimproved, which is subdivided and may be independently owned and conveyed (but not units in any condominium project) and which is intended for development, use and occupancy for purposes consistent with the Governing Documents. In the case of a portion of the Property intended and suitable for subdivision but as to which no final lot subdivision map has been filed, such property shall be deemed to be a single Unit until such time as a final lot subdivision map is filed of record with respect to all or a portion of the property. The term "Unit" shall refer to the land which is part of the Unit as well as any improvements thereon. The development of a condominium project on any Unit shall not, by reason thereof, convert such Unit into separate Units.

1.70 "WWTP". The Kealahou Wastewater Treatment Plant, which is further described in Article 15 below.

1.71 "Zoning Conditions". The conditions set out in Section 2 of the Zoning Ordinance, as such conditions may be amended from time to time.

1.72 "Zoning Ordinance". That certain County of Hawai'i Ordinance No. 04-110, effective as of October 12, 2004, as such ordinance may be amended from time to time.

ARTICLE 2 PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, in accordance with the intended purposes of such Common Area, which shall be appurtenant to and shall pass with the title to each Unit, subject to:

- (a) this Declaration and all other Governing Documents;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area or any portion thereof;

(d) the right of the Board to allow Persons other than Owners, their employees, lessees, tenants, invitees, clients, customers and guests to use any facilities situated upon the Common Area subject to such conditions and restrictions as may be established by the Board;

(e) the right of the Board to suspend the right of an Owner to use facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 Days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to Section 3.25 of the By-Laws;

(f) the right of the Association, acting through the Board, to dedicate, grant, lease or transfer all, any part of or any interest in the Common Area as set forth in this Declaration; and

(g) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend its right of use, access and enjoyment to such Owner's employees, lessees, tenants, invitees, clients, customers and guests, as applicable, subject to reasonable regulation by the Board. An Owner who leases its Unit shall be deemed to have assigned all such rights to the lessee of such Unit subject to the terms of this Declaration.

2.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to written notice prior to any disbursement of the condemnation award or proceeds of conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the

restrictions on voting set forth in Section 3.2 and in the By-Laws. All co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner may be exercised by any representative of such Owner. A "representative" shall be any officer, director, partner, employee, member, manager or trustee of such Owner (unless otherwise specified by written notice to the Association signed by such Owner), or any Person designated from time to time in a written notice to the Secretary of the Association signed by such Owner, or any Owner who is a natural person.

3.2 Voting. The Association shall have two classes of membership, Class "A" and Class "B." Class "A" shall have two subclasses of membership, Class "A (General Industrial)" and Class "A (Industrial-Commercial)".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A (General Industrial)" Members shall be all Owners of Units that are General Industrial Property. Class "A (Industrial-Commercial)" Members shall be all Owners of Units that are Industrial-Commercial Property. Class "A" Members shall have a single weighted vote for each Unit in which they hold the interest required for membership under Section 3.1; provided, there shall be only one weighted vote per Unit. The vote for each Unit shall be weighted in accordance with the formula set forth in Exhibit "C". In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors during the Class "B Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee as provided in Section 3.20 of the By-Laws.

The Class "B" membership shall terminate two years after expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws unless the Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes (as weighted) for each Unit which it owns.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment and other personal property of the Association), and shall keep it in attractive condition and good repair, consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or

employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3 Enforcement.

(a) Subject to the provisions of this Section 4.3 and Section 5.2, only the Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and/or the rules of the Association, as any of the same may be applicable to a Unit, after compliance with the notice and hearing procedures set forth in Section 3.25 of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator (in the event that any employee, lessee, tenant, occupant, invitee, client, customer or guest of a Unit violates this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Design Guidelines, the Archaeological Preservation Plan, the Solid Waste Management Plan, and/or the rules of the Association, as any of the same may be applicable to a Unit, and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) filing liens in the Public Records for nonpayment of any assessments or fees;

(iii) filing notices of violations in the Public Records providing record notice of any violation of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Design Guidelines, the Archaeological Preservation Plan, the Solid Waste Management Plan, and/or the rules of the Association, as any of the same may be applicable to a Unit;

(iv) suspending an Owner's right to vote;

(v) suspending any Person's right to use any facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(vi) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 Days delinquent in paying any assessment or other charge owed to the Association; and

(vii) levying Specific Assessments to cover costs incurred by the Association in bringing a Unit into compliance in accordance with Section 8.5.

(b) In addition, and subject to the approval requirements set forth in the next following paragraph or elsewhere in this Declaration, the Board, or the covenants committee if established, with the Board's approval, may elect to enforce any provision of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and/or the rules of the Association, as the same may be applicable to a Unit, by entering the Unit and exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules or the correction of any maintenance, construction or other violation of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and/or the rules of the Association, as the same may be applicable to a Unit) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

(c) THE FOREGOING NOTWITHSTANDING, (i) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, or the covenants committee if established, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members, or the GIDRC (with the approval of such Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members) shall have the authority to exercise any sanctions, entry, self-help, suit or other rights and remedies authorized under this Section 4.3 against an Owner of General Industrial Property for violation of Section 5.2, Article 9, Section 10.2, Section 10.3 (except that with respect to violations of the Pollution Prevention Plan, the Board can act without such Majority approval), Section 10.4, Section 10.5, Section 10.7, Section 10.10, Section 10.12, Section 10.14, Section 10.19, and Section 17.7, the General Industrial Design Guidelines or the rules of the Association, and (ii) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, or the covenants committee if established, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (Industrial-Commercial)" Members, or the ICDRC (with the approval of such Majority of the member(s) of the Board that were elected by the Class "A (Industrial-Commercial)" Members) shall have the authority to exercise any sanctions, entry, self-help, suit or other rights and remedies authorized under this Section 4.3 against an Owner of Industrial-Commercial Property for violation of Section 5.2, Article 9, Section 10.2, Section 10.3 (except that with respect to violations of the Pollution Prevention Plan, the Board can act without such Majority approval)

Section 10.4, Section 10.5, Section 10.7, Section 10.10, Section 10.12, Section 10.14, Section 10.19, and Section 17.7, the Industrial-Commercial Design Guidelines or the rules of the Association. Notwithstanding anything to the contrary contained herein, with respect to violations of the Pollution Prevention Plan, the Board can act without such Majority approval described in this paragraph.

(d) In addition, the Declarant during the Class "B" Control Period, shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce the provisions of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and/or the rules of the Association, as any of the same may be applicable to a Unit. The Declarant shall not be obligated to take action to enforce any covenant, restriction, or rule in the exercise of its business judgment. Any such exercise shall not be construed a waiver of the right of the Declarant to enforce such provision under any circumstances or estop the Declarant from enforcing any other covenant, restriction or rule.

(e) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association or the Declarant to enforce the provisions of this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and/or the rules of the Association, if the Association or the Declarant, as the case may be, prevails, it shall be entitled to recover, to the maximum extent permissible, all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(f) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule in the exercise of its business judgment. Any such exercise shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or estop the Association from enforcing any other covenant, restriction or rule.

(g) The Association and the Declarant may, but is not required, by contract or other agreement, to oversee and/or report violations of applicable county, city, state and federal ordinances, rules, regulations, statutes and laws, including the LUC Conditions and the Zoning Conditions, to the appropriate governmental authorities, and permit state, local and other governmental authorities to enforce county, city, state and federal ordinances, rules, regulations, statutes and laws on the Property for the benefit of the Association and its Members. The Association and the Declarant shall have the power to oversee and report any violations of the Pollution Prevention Plan and/or the Storm Water CC&Rs applicable to a Unit, to the appropriate governmental authorities.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. For so long as the Declarant owns any portion of the property described on Exhibit "A", the Declarant may designate sites within the Property for public or quasi-public facilities, provided said designations will not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including subdivision, consolidation and/or conveyance of the site, if so directed by Declarant. The sites so designated may include other property not owned by Declarant provided the owner of such other property consents thereto. No membership approval shall be required for such designations of sites within the Property for public or quasi-public facilities.

4.6 Dedication of Common Area. The Association, or the Declarant for so long as the Declarant owns any portion of the Property described on Exhibit "A", may dedicate portions of the Common Area, free of the terms of this Declaration, to the County of Hawaii, or to any other local, state, governmental or quasi-governmental entity without obtaining any membership approval.

4.7 Indemnification. The Association shall indemnify every officer, director and committee member, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Hawaii law.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.

The Association shall also indemnify and forever hold harmless the Declarant to the extent that any officer, director or employee of the Declarant serves as an officer, director or committee member of the Association and the Declarant incurs any damages or expenses, including attorneys' fees, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding) by reason of having its officers, directors or employees serve as officers, directors, or committee members of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Hawaii law. This right to indemnification shall not be exclusive of any other rights to which the Declarant may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.8 Security. The Association, the Declarant, or any successor Declarant may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant and any successor Declarant are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged to all Units, as a General Assessment or a Special Assessment, or only to those certain Units benefited thereby, as a Specific Assessment, as determined by the Board in its sole discretion.

4.9 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations for the benefit of the Property, the Association and its Members without obtaining membership approval. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

4.10 Provision of Services. The Association may provide services for all or a portion of the Members of the Association and their employees, lessees, tenants, invitees, clients, customers and guests. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services. The costs of services provided by the Association to less than all of the Members shall be charged to the Unit(s) owned by the Members receiving such services as a Specific Assessment. By way of example, some services which may be provided include landscape maintenance, pest control service, trash pick-up and security. The Association shall be permitted to add, modify or cancel any services being provided by the Association. Nothing contained herein may be relied upon as a representation as to the services, if any, that will be provided by the Association.

4.11 Future Development. Each Owner acknowledges, understands and covenants to inform its lessees, tenants and all occupants of its Unit that the Property and areas adjacent to the Property are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner waives all claims with respect thereto. Owner agrees that if Owner or Owner's employees, lessees, tenants, invitees, clients,

customers, guests, contractors or agents enter onto any area of construction, they do so at their own risk, and neither the Declarant, the Association nor their respective contractors, agents or employees shall be liable for any damage, loss or injury to such persons.

4.12 "AS IS" Disclaimer of Warranties. Each Owner hereby acknowledges that except for such warranties as may be included in any Owner's instrument of conveyance to a Unit, neither the Declarant nor the Association makes any warranty, express or implied, as to the suitability or fitness of any of the Units for any purpose, or as to the merchantability, value, quality, condition or saleability of the Units. The sale of the Units by Declarant to any Owner shall be "AS IS" and "WHERE IS", except as may be specified in any instrument executed by the Declarant. It shall be the Owner's responsibility to inspect its Unit to ensure that it is suitable for such Owner's intended use. Each Owner further acknowledges that (i) the Declarant has not made any representation, warranty or assurance that the Property will be developed in any particular manner, and (ii) the Master Plan or any other plan envisioned for the development of the Property may be changed due to a variety of factors, including, without limitation, market conditions.

ARTICLE 5 MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good repair, and replace as necessary or desirable to maintain the applicable Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area;

(ii) all storm water management facilities, dry wells and retention basins serving the Property that are not dedicated to and maintained by a governmental agency or the specific responsibility of an Owner with respect to the Unit;

(iii) all planter strips and landscaping within any rights-of-way or medians of the roadways within or adjacent to the Property to the extent that the Board determines that such maintenance is necessary or desirable to maintain the applicable Community-Wide Standard;

(iv) all landscaping and improvements within the Highway Buffer Area to the extent that such maintenance responsibility is not assigned to or assumed by the owner of any adjacent properties;

(v) all entry signs and features serving the Property, constructed by or on behalf of the Declarant;

(vi) all landscaping, and other structures and improvements, if any, including any private roads, sidewalks and parking areas, situated upon the Common Area;

(vii) all natural groundcover, shrubs, bushes and trees located within the Quarry Buffer Area to be trimmed, cut, and maintained by the Association, the cost of which shall be handled as a Specific Assessment to the Owners of the benefited Units in the General Industrial Property;

(viii) any private infrastructure improvements or facilities erected on the Property required to service the Units and any adjacent, but not necessarily contiguous, properties;

(ix) any Interpretive Site Complex, Cultural Preservation Area and/or Burial Sites that may be conveyed to the Association or covered by any maintenance easement in favor of the Association;

(x) all landscaping and signage within or adjacent to public rights-of-way within or adjacent to the Property which the Board, in its sole discretion, determines is the maintenance responsibility of the Association; and

(xi) such portions of additional property as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain, or provide a higher level of maintenance to, property which it does not own, including, without limitation, storm drain facilities and property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the applicable Community-Wide Standard.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or the owner of any "adjacent properties," as that term is defined in Section 5.5, or (ii) such property is dedicated to the County of Hawaii, or to any other local, state or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) There are hereby reserved to the Association perpetual, non-exclusive easements (including the right to designate easement(s)) over the Property, including any Unit or Units, as necessary to enable the Association to fulfill such maintenance, repair and replacement responsibilities, provided said proposed easements will not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair

and replacement which benefits one or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 8.5.

5.2 Owner's Responsibility.

(a) Each Owner shall maintain its Unit and all structures, parking areas, irrigation systems, landscaping, setback areas and other improvements, including storm water drainage facilities, filtration devices and IWS/ATS, comprising the Unit or located in rights-of-way adjacent to the Owner's Unit in a manner consistent with the applicable Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a governmental agency pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit, including, but not limited to, the applicable Design Guidelines. Such maintenance includes, but is not limited to, the following:

(i) Removal of all litter, trash, refuse and waste on a regular basis (unless handled by the Association on a project-wide basis). Keeping the trash pick-up and service loading areas in accordance with the applicable Community-Wide Standard and applicable Design Guidelines. Trash removal/disposal and recycling activities, including greenwaste, shall be done in accordance with the Solid Waste Management Plan for the Property, which is incorporated herein by reference;

(ii) Lawn mowing or weed whacking on a regular basis such that the grass on undeveloped land does not create an annoyance or fire hazard and the grass level on developed land is no higher than 4".

(iii) Tree and shrub pruning;

(iv) Keeping exterior lighting, signage, fixtures and mechanical facilities in an such condition and working order in accordance with the applicable Community-Wide Standard;

(v) Keeping plant materials within lawn and garden areas healthy and alive, and any adjoining rights-of-way or drainage ditches free of weeds, trash and debris;

(vi) Promptly removing and replacing any dead plant material;

(vii) Keeping parking areas, driveways and roads in good repair;

(viii) Handling of parking areas in accordance with the applicable Community-Wide Standard;

(ix) Prompt repair of exterior damage to improvements and keeping exterior improvements in good repair;

(x) Maintenance of on-site drainage facilities, including dry wells, catch basins and filtration devices and retention basins as specified in the Storm Water CC&Rs and Section 16.7 below;

(xi) Regular servicing, maintenance and repair of IWS/ATS erected on the Unit, including any related layered absorption beds, leach fields or related after treatment systems as specified in Section 15.4 below; and

(xii) Maintaining all exterior service and storage areas in accordance with the applicable Community-Wide Standard.

(b) Every Owner shall also be responsible for the security and safety of its Unit notwithstanding any security systems or measures which may be provided by the Association.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, the Board may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.5. The Board shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

(d) THE FOREGOING NOTWITHSTANDING, (i) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members, or the GIDRC (with the approval of such members of the Board that were elected by the Class "A (General Industrial)" Members) shall have the right to exercise any rights and remedies authorized under this Section 5.2 against an Owner of General Industrial Property for violation of this Section 5.2, and (ii) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (Industrial-Commercial)" Members, and only the ICDRC (with the approval of such members of the Board that were elected by the Class "A (Industrial-Commercial)" Members) shall have the right to exercise any rights and remedies authorized under this Section 5.2 against an Owner of Industrial-Commercial Property for violation of this Section 5.2.

(e) In addition, the Declarant during the Class "B" Control Period, shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce the provisions of this Section 5.2.

5.3 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. To the extent reasonably possible, the use of party walls and structures shall be minimized.

(b) Sharing of Repair and Maintenance. Except as may otherwise be provided in an executed instrument recorded in the Public Records signed by the Owners of the affected Units, the cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.4 Standard of Performance. All maintenance shall be performed in a manner consistent with the applicable Community-Wide Standard and all applicable covenants, including the LUC Conditions, the Zoning Conditions and the applicable Design Guidelines. Maintenance shall include the responsibility for repair and replacement as necessary. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own.

5.5 Covenant to Share Costs. Adjacent to or in the vicinity of the Property, there may be certain areas, including without limitation, other residential, retail, commercial, or business areas, which are not subject to this Declaration and which are neither Units nor Common Area as defined in this Declaration (hereinafter "adjacent properties"). The owners of such adjacent properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article 8 of this Declaration.

The Association may enter into agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Property; or

(b) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Property.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such agreement(s). The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein or in such agreement(s).

ARTICLE 6 INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available and to the extent the Board deems reasonably necessary, blanket property insurance on any portions of the Area of Common Responsibility for which the Association has maintenance, repair and replacement responsibilities; commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members; directors and officers liability coverage; fidelity insurance covering Persons handling Association funds; and such additional insurance as the Board, in its best business judgment, determines advisable or is required by law. The Board shall annually review the types and amounts of insurance coverage and shall establish the requirements for such coverages. Association insurance premiums shall be a Common Expense.

In the event of an insured loss, the deductible, in such amount as established by the Board, shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.25 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their employees, lessees, invitees, clients, customers or guests, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.5.

(b) Policy Requirements. Association insurance shall not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually. The Association's policies shall contain an agreed amount endorsement.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Board, its agents, Members and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners individual policies from consideration under any 'other insurance' clause;
- (v) an endorsement requiring at least 30 Days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(vi) a cross liability provision.

(c) Damage and Destruction. In the event of a loss covered by Association insurance, only the Board or its duly authorized agent shall be authorized to file any insurance claim, which the Board may or may not file in its sole discretion. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless (i) the Members representing at least 67% of the total Class "A" votes (as weighted) in the Association, and the Class "B" Member, if any, decide within 60 Days after the loss, or such additional time deemed necessary by the Board, not to repair or reconstruct; and (ii) the failure to repair or reconstruct any damage to or destruction of the Common Area would not violate or breach the terms of the LUC Conditions, the Zoning Conditions, or any other agreement entered into by the Declarant or the Association with respect to the Property or any applicable laws.

If the damage or destruction to the Common Area is not repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and shall be maintained by the Association consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

6.2 Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to obtain or cause its tenant to obtain liability insurance with limits of not less than \$1,000,000.00 or such higher limits as may be reasonably required by the Board from time to time and property insurance for the full replacement cost, to the extent available at a commercially reasonable cost, of all insurable improvements on its Unit, less a reasonable deductible, unless an Owner elects to self-insure the improvements on its Unit and provides evidence reasonably satisfactory to the Association of such Owner's financial capacity to self-insure. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on its Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive condition consistent with the applicable Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE 7 ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Unilateral Annexation by Declarant. Within 10 years of recording this Declaration, Declarant shall have the unilateral right, but not an obligation, to subject to the provisions of this Declaration and the jurisdiction of the Association any additional property which is adjacent or contiguous to the boundaries of the Property or which serves all or any portion of the Property. Annexation of property shall be accomplished by recording a

Supplemental Declaration in the Public Records. Any such annexation shall be effective upon the recording of the Supplemental Declaration unless otherwise provided therein. The Supplemental Declaration may impose additional covenants, conditions, restrictions and/or obligations on, or modify those contained in this Declaration as applicable to, the land described in such Supplemental Declaration, as appropriate to reflect the different character of any such annexed property. If such property to be annexed is Industrial Commercial Property, the Supplemental Declaration shall designate whether such property is to be within the Business Park/Industrial Area or the Retail/Commercial Area.

7.2 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote or written consent, or any combination thereof, of Members representing a Majority of the total Class "A" votes (as weighted) of the Association, and the consent of the Declarant so long as Declarant owns any portion of the property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. If such property to be annexed is Industrial Commercial Property, the Declarant or the Board as provided in Section 9.3 (a) below shall designate whether such property is to be within the Business Park/Industrial Area or the Retail/Commercial Area in the Supplemental Declaration. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent to the annexation or designation of the property is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Property from the coverage of this Declaration. Such amendment shall not require the consent of any Person unless such property is owned by a Person other than the Declarant, in which case, the consent of the Owner is required. Removal or withdrawal of all or any portion of the Property shall be accomplished by recording a Supplemental Declaration in the Public Records. Any such removal or withdrawal shall be effective upon the recording of the Supplemental Declaration unless otherwise provided therein.

ARTICLE 8 ASSESSMENTS

8.1 Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for the Common Expenses of the Association. There shall be three types of assessments: (i) General Assessments as described in Section 8.3; (ii) Special Assessments as described in Section 8.4; and (iii) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate to be established by the Board), late charges in such amount as the Board may establish, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.6. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or other charges levied on its Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt itself from liability for assessments by non-use of Common Area, abandonment of such Owner's Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2 Declarant's Obligation for Assessments. For so long as the Class "B" membership exists, Declarant may annually elect either to pay assessments based on its Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing prior to the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.3 Computation of General Assessments. The Board shall prepare a budget covering the estimated receipts and disbursements during the coming year. General Assessments shall be levied on all Units subject to assessment pursuant to Section 8.7 based on the formula set forth in Exhibit "C". The Board shall send a notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 Days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 67% of the total Class "A" votes (as weighted) in the Association and by the Class "B" Member, if any. If a budget is not adopted for any year, or if the Association fails to deliver an assessment notice, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year and each Owner shall continue to pay General Assessments on the same basis as during the last year. Once a new budget is adopted and assessments levied, the Association may retroactively assess any shortfalls in collections.

If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 Days after delivery of the notice of assessments.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.4 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. So long as the total amount of Special Assessments allocable to any Unit does not exceed \$2,000.00 in any one fiscal year, the Board may impose the Special Assessment. Except as provided in Section 6.1(c) hereof, any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed this limitation shall require the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total Class "A" votes (as weighted) in the Association, and, if such exists, the affirmative vote or written consent of the Class "B" Member. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied on all Units based on the formula set forth in Exhibit "C".

8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, security service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs, including overhead and administrative costs, of providing benefits to less than all of the Members as provided in Section 4.10; and

(c) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents applicable to such Unit(s) or costs, expenses or damages incurred by the Association as a consequence of the acts, omissions or other conduct of the Owner or occupants of the Unit, or such Owner's or occupant's agents, contractors, employees, licensees, invitees, clients, customers or guests; provided however, the Board shall give the Owner or occupant, as the case may be, prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c).

8.6 Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure in the same manner as mortgages are foreclosed under Hawaii law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments or relieve the transferring Owner from liability for the amount of lien assessed prior to the date of the sale or transfer. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien (but not the personal liability of the foreclosed Owner) as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses

collectible from Owners of all Units subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.7 Date of Commencement of Assessments. Except as provided in Article 18, the obligation to pay assessments shall commence as to each Unit on the first Day after a Unit is conveyed to a Person who is not the Declarant. The first annual General Assessment levied on each Unit shall be adjusted according to the number of Days remaining in the fiscal year at the time assessments commence on the Unit and shall be due and payable on the date of conveyance.

8.8 Capitalization of Association. The Association may, but shall not be required to, levy against each Unit a one-time contribution to the working capital of the Association in an amount equal to one-sixth of the annual General Assessment per Unit for the year in which such charge is levied. If levied, such charge shall be paid to the Association upon the acquisition of record title to a Unit by the first Owner thereof other than the Declarant. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment.

8.9 Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) The Cultural Preservation Area, Highway Buffer Area and the Interpretive Site Complex, to the extent that any or all of these are not dedicated to the Association; and
- (c) The Parcel 74 Unusable Area; and
- (d) Any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE 9 ARCHITECTURAL STANDARDS

9.1 General. Except as otherwise expressly provided in this Declaration, no improvements shall be placed, erected, installed, constructed, or altered upon any Unit except in compliance with this Article, and approval of the applicable Design Review Committee under Section 9.3. "Improvements" shall mean and include, but not be limited to, buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other improvements), outbuildings, underground installations, slope alterations, surface water drainage facilities, sediment control devices, roads, berms, driveways, parking areas or facilities, loading docks and areas, fences, screening walls, retaining walls, enclosures, stairs, decks, windbreaks, planting or removal of trees, shrubs and other landscaping materials,

poles, signs, antennas and satellite dishes, utilities, water lines, sewer, electrical and gas distribution facilities, heating, cooling and air circulation equipment and facilities, roofed structures, hedges, exterior illumination, changes in exterior color or shape, staking, clearing, excavation (as defined in Section 10.13), grading (as defined in Section 10.8), exterior alteration of existing improvements, and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Unit.

All improvements to be constructed on any portion of the Property shall be designed and built in accordance with the plans and specifications prepared by a person licensed in the State of Hawaii to practice architecture, engineering, or landscape architecture, or other work related to the intended construction in accordance with plans prepared by a professional licensed pursuant to Chapter 464, HRS, unless otherwise acceptable to the applicable Design Review Committee, in its sole discretion. All plans and specifications shall be subject to review as provided herein. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

9.2 Architectural Review. Responsibility for administration of the Industrial-Commercial Design Guidelines and review of all applications for construction and modifications under this Article for the Industrial-Commercial Property shall be handled by the ICDRC. Responsibility for administration of the General Industrial Design Guidelines and review of all applications for construction and modifications under this Article for the General Industrial Property shall be handled by the GIDRC. Each DRC shall consist of three to five persons, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the DRC. The Majority of the ICDRC must be Members of the Association, each of whom must also be an Owner of a Unit within the Industrial-Commercial Property, and the Majority of the GIDRC must be Members of the Association, each of whom must also be an Owner of a Unit within the General Industrial Property.

Until 100% of the Property have been conveyed to Owners other than Declarant, the Declarant retains the right to appoint all members of each DRC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of each DRC, who shall thereafter serve and may be removed in the Board's discretion.

Each DRC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the DRC in having any application reviewed by architects, engineers or other professionals. The Board may employ architects, engineers, or other persons as it deems necessary to enable the DRC to perform its review and may include the compensation of such persons in the annual operating budget as a Common Expense.

In the conduct of its duties and responsibilities, each DRC shall abide by the meeting, notice and quorum requirements applicable to the Board pursuant to the By-Laws, and each

committee shall elect a chairperson from among its members who shall preside at its meetings. Each DRC may meet as determined necessary by the members of each DRC.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare Design Guidelines applicable to each portion of the Property, provided such Design Guidelines are reasonably consistent with and do not violate this Declaration, the Hawaii County Code, the LUC Conditions and the Zoning Conditions. The Design Guidelines may contain general provisions applicable to all of the Property, as well as architecture, landscape and other specific provisions which vary from one portion of the Property to another depending upon the location, use and unique characteristics. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to Declarant, the Board, and the applicable DRC in considering applications hereunder.

Unless adopted by Declarant prior to such meeting, each DRC as to the Design Guidelines applicable to such DRC, shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have authority to amend the Design Guidelines consistent with this Declaration, the Hawaii County Code, the LUC Conditions and the Zoning Conditions. Any amendments to the Design Guidelines shall be prospective only and shall not apply retroactively to require modifications to or removal of improvements previously approved once the approved construction or modification has commenced, unless such application of any such amendment is approved by the Owner. Except as provided above, there shall be no limitation on the scope of amendments to the Design Guidelines; each DRC is expressly authorized to amend the applicable Design Guidelines to remove requirements previously imposed or otherwise to make the applicable Design Guidelines less restrictive.

Notwithstanding anything to the contrary contained herein, until 100% of the Property has been conveyed to Owners other than Declarant, the Declarant shall retain the right, in Declarant's sole and absolute discretion, to make or change the designation of all or portions of the Industrial-Commercial Property between the Business Park/Industrial Area and the Retail/Commercial Area. There shall be no surrender of this right prior to the time specified above except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall have the right to make or change the designation of Industrial-Commercial Property between the Business Park/Industrial Area and the Retail/Commercial Area. No change by Declarant or the Board of the designation of a Unit after Declarant has transferred its interest as Owner of such Unit shall be effective without the written approval of the Owner of such Unit. The Design Guidelines applicable to any redesignated area shall be prospective only and shall not apply retroactively to require modifications to or removal of improvements previously approved once the approved construction or modification has commenced unless such application is approved by the Owner.

Each DRC shall make the applicable Design Guidelines available to Owners who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the applicable Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate DRC, unless the DRC has granted a variance in writing pursuant to Section 9.5. So long as a DRC has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of, compliance with, or a variance from the Design Guidelines, the LUC Conditions, the Zoning Conditions and this Declaration shall be final.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Property until an application for approval of the proposed work has been submitted to and approved by the applicable DRC. A DRC may require the submission of application forms and information as it deems necessary to consider any application and may require multiple stages of application and review for any construction or modification.

In the event that a DRC fails to approve or to disapprove in writing any stage of application within 30 Days after submission of all information and materials reasonably requested, the application shall be deemed approved unless an extension of such time period is agreed to by the applicable DRC and the applicant. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Declaration, the Design Guidelines, the LUC Conditions or the Zoning Conditions unless a variance has been granted in writing by the applicable DRC pursuant to Section 9.5.

(c) Basis of Approval. In reviewing each submission, a DRC may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing structures, location within the "General Industrial Property" or the "Retail-Commercial" or "Business Park-Industrial" areas of the Property as designated on the Design Guidelines, and location in relation to surrounding structures, topography, setbacks and finish grade elevation, among other things. Decisions of a DRC shall be made by a Majority vote of all members of the applicable DRC. Except for decisions regarding the General Industrial Property, decisions of the DRC may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as DRC members change over time.

Review of the plans shall be based on the general adequacy of site dimensions, conformity and harmony of the exterior design, location with respect to adjacent structures and sites, relationship of finished grades and elevations to neighboring lots, conformity to the restrictions and covenants set forth herein, in the applicable Design Guidelines, the LUC Conditions, the Zoning Conditions and the other Governing Documents, and (i) in the portions of the Property within the County of Hawaii Industrial-Commercial Mixed District zone, compatibility with the existing light industrial and retail-commercial developments therein, and (ii) in the portions of the Property within the County of Hawaii General Industrial District zone, compatibility with the existing quarry and other heavy industrial operations therein. A DRC shall have the right to disapprove any submitted plans of any Unit if such plans are not in conformity with the provisions of this Declaration, the applicable Design Guidelines, the LUC Conditions, the Zoning Conditions or the other Governing Documents.

All work shall be commenced and completed within such period as provided in the applicable Design Guidelines or as the applicable DRC may specify in the notice of approval, unless commencement or completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the reasonable discretion of the applicable DRC. In the event construction of the work called for by the approved plans has not substantially commenced within such period then approval shall be deemed expired and no construction shall thereafter commence unless a written renewal is granted by the applicable DRC.

(d) Easements and Common Area Dedications. As a prerequisite of approval of plans, the applicable DRC shall have the power to require an Owner who has submitted plans to grant or assign any reasonable utility, drainage or other easements as may be required for the orderly development and use of the Property and/or the enjoyment and benefit of the Owners or the Association. Where possible, the applicable DRC shall attempt to locate any such required easements along the perimeter of the Unit, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit.

9.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5 Variance. The Declarant until appointment of the DRC, and thereafter, the applicable DRC may authorize variances from compliance with any of the applicable Design Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations and only when such variance shall not conflict with any governmental regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to a specific restriction, limitation or condition contained in this Declaration; or (c) estop Declarant or any DRC from denying a variance in other circumstances. Unless otherwise determined by the DRC, for purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, nor any DRC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any DRC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Declarant, the

DRCs and their members shall be defended and indemnified by the Association as provided in Section 4.7.

9.7 Enforcement.

(a) Any structure, improvement or landscaping placed or made in violation of this Article, the LUC Conditions, the Zoning Conditions, the applicable Design Guidelines or the other Governing Documents applicable thereto, shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 9.5 and the applicable Design Guidelines. Upon written request from the applicable DRC, Owners shall, at their own cost and expense, remove such structure or improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required after notice and a reasonable period to cure the violation, the Board shall have the right to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the applicable DRC and, further, the Board or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with the interest up to the maximum rate then allowed by law, may be assessed against the Owner of the Unit and collected as a Specific Assessment.

(b) THE FOREGOING NOTWITHSTANDING, (i) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, with the approval of the Majority of the member(s) of the Board that represent the General Industrial Property, shall have the right to exercise any rights and remedies authorized under this Section 9.7 against an Owner of General Industrial Property, and (ii) after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, with the approval of the Majority of the member(s) of the Board that represent the Industrial-Commercial Property, shall have the right to exercise any rights and remedies authorized under this Section 9.7 against an Owner of Industrial-Commercial Property. In addition, the Declarant during the Class "B" Control Period, shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the applicable DRC.

(c) Unless otherwise specified in writing by the applicable DRC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Board shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.25 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

(d) Any contractor, subcontractor, agent; employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the applicable Design Guidelines may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, nor its

officers, nor its directors shall be held liable to any Person for exercising the rights granted by this paragraph.

ARTICLE 10 USE RESTRICTIONS

All provisions of the Governing Documents applicable to a Unit shall also apply to all employees, lessees, tenants, occupants, invitees, clients, customers and guests of any such Unit. Every Owner shall cause all employees, lessees, tenants, occupants, invitees, clients, customers and guests of its Unit to comply with the foregoing, and every Owner shall be responsible for all violations and losses to the Common Area caused by such Persons, notwithstanding the fact that such Persons are fully liable and may be sanctioned for any violation.

10.1 Uses of the Property. The following provisions shall be applicable to any and all construction, improvement, alteration, addition or use of the Property:

(a) Prohibited Uses. The following uses of the Property are not permitted so long as, and to the extent, such uses are prohibited by the LUC Conditions:

- (i) heliports;
- (ii) bulk storage of flammable and/or explosive materials (tank farms);
- (iii) landfills for dumping or disposal of refuse or waste matter (except for green waste/composting facilities);
- (iv) fertilizer manufacturing plants;
- (v) junkyards;
- (vi) public dumps;
- (vii) saw mills;
- (viii) refining of petroleum products;
- (ix) slaughterhouses;
- (x) commercial pesticide and/or extermination facilities; and
- (xi) power plants.

(b) Other Prohibited Uses. The following uses of the Property are also not permitted:

- (i) dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, dead animals, or refuse;

(ii) dumping, storage, disposal, incineration, treatment, processing or reduction of Hazardous or Toxic Substances; except that petroleum products may be placed, held, located, stored and disbursed (A) on the Property where such petroleum products are incident to the retail operation of a gasoline service station primarily for non-commercial motor vehicles and (B) on the General Industrial Property where such petroleum products are incident to a permitted use under the applicable zoning regulations, and where, in the case of (A) and (B), the petroleum products are handled, stored and disbursed in conformance with the Pollution Prevention Plan and the rules, regulations and requirements of all applicable governmental authorities;

(iii) objectionable or nuisance uses, as reasonably determined by the applicable DRC in its sole discretion, by reason of odor, dust, fumes, smoke, noise, noxious substances, vibration, refuse matter or water-carried waste;

(iv) any windmills, wind machines;

(v) unless specifically approved in writing by the applicable DRC (which approval may be withheld for any reason), the use of explosives or any other dangerous or unsafe materials; and

(vi) unless specifically approved in writing by the applicable DRC (which approval may be withheld for any reason), the use of firearms.

(c) Permissible Uses. Except for the General Industrial Property which may be used for quarry operations, heavy industrial purposes and other uses permitted in the County of Hawaii MG General Industrial District, all building sites within the Property shall be used only for uses permitted in the County of Hawaii MCX Industrial-Commercial Mixed District, subject to the conditions set forth in this Declaration and subject to the requirements of the applicable Design Guidelines and other applicable Governing Documents and the Hawaii County Code. In the event that (i) a use is permitted by this Declaration but not permitted by the applicable zoning, such use shall be permitted only if the applicable authorities specifically approve a variance for such use, and (ii) a use is permitted by the applicable zoning and is not prohibited by this Declaration, such use shall be permitted only if approved by any required governmental entity, provided however, that in both of (i) and (ii), such use shall be subject to the conditions set forth in this Declaration and subject to the requirements of the applicable Design Guidelines and other applicable Governing Documents and the Hawaii County Code.

10.2 Signs. No sign of any kind, shall be erected or installed within the Property without the written consent of the applicable DRC, except: (a) entry and directional signs installed by Declarant or the Board; (b) such signs as may be required by legal proceedings and/or the LUC Conditions; and (c) signs within the General Industrial Property. Except as provided in the preceding sentence, all signage installed shall comply with the requirements set forth in the applicable Design Guidelines, the other Governing Documents applicable thereto and the Hawaii County Code.

The ICDRC reserves the right to restrict the design, size, quantity, location, color, materials, illumination, lettering and style of all signs within the Industrial Commercial Property.

The ICDRC's approval or disapproval of signs must be consistent with this Declaration and the applicable Design Guidelines. In order to enhance the appearance and architectural harmony of the Industrial Commercial Property, an Owner may present to the ICDRC from time to time an integrated signage program to apply to such Owner's Unit, with criteria as to sign design, location, materials and graphic composition. If the integrated signage program is approved by the ICDRC, all signs erected on such Unit shall thereafter conform to such signage program and criteria and need not require specific approval from the ICDRC.

All signs within the Property shall be of a design and material consistent with the building itself and the requirements of the applicable Design Guidelines. Flashing or moving character signs shall not be installed. Any permitted illuminated signs shall be rear lighted or lighted from non-apparent light sources.

10.3 Parking. All plans submitted to the ICDRC for Units within the Industrial-Commercial Property shall include specific information as to construction materials, construction methods to be used and diagrams of the number, type and configuration of parking spaces, including handicapped parking spaces and loading zones in accordance with the applicable Design Guidelines, the Pollution Prevention Plan, if applicable, the Hawaii County Code, and all applicable federal and state laws and regulations.

Plans submitted to the ICDRC for Units within the General Industrial Property shall not require specific parking plans except as they relate to any administrative or office structures on such Unit. Heavy trucks and equipment shall be parked in compliance with the applicable provisions of the Pollution Prevention Plan.

Vehicles shall be parked only in appropriate spaces or areas within the Unit. No parking shall be permitted on Common Area streets or roads except as authorized by the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt. The Board shall have the authority to enforce these rules and regulations and to promulgate penalties and sanctions for the parking violations. The Declarant and/or the Association may designate certain Common Area parking areas for visitors or guests.

Service and delivery vehicles may be parked in designated Common Areas of the Property approved by the Board during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Section 4.3.

10.4 Quiet Enjoyment. Except on the General Industrial Property which may be used for heavy industrial uses, nothing shall be done or maintained on any part of a Unit which creates noise, odors or other conditions which would unreasonably disturb the peace, quiet, safety, comfort, or serenity of the lessees, tenants, employees, occupants and invitees of other Units. No damage to the Common Areas or any part thereof shall be caused by any Owner. Each Owner shall indemnify and hold the Association and all other Owners harmless against all loss to the Association or other Owners resulting from any such damage caused by such Owner or such Owner's contractors, employees, lessees, tenants, invitees, clients, customers or guests.

10.5 Unsightly or Unkempt Conditions. Except on the General Industrial Property which may be used for heavy industrial uses including the stockpiling of raw or processed material, all portions of a Unit outside of enclosed structures shall be kept in a reasonably clean and tidy condition at all times. Within the Industrial Commercial Property, nothing shall be done, maintained, stored, or kept outside of enclosed structures on a Unit which, in the determination of the Board, causes an unclean, unhealthy, or untidy condition to exist. All exterior service and storage areas shall be screened as required by the Design Guidelines. Upon request by the Board, Owners shall remove items or structures in violation of this provision. The Board shall have the authority to enforce these provisions and to promulgate penalties and sanctions for any violations.

10.6 Irrigation. Owners, the Association and the Declarant shall not install irrigation systems which draw upon ground or surface waters within the Property.

10.7 Temporary Structures. Except as may be permitted by the Declarant during initial construction within the Property, or otherwise approved by the Board, temporary structures shall not be placed upon a Unit.

10.8 Grading and Drainage. No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. For purposes of this Section, "grading" shall mean the excavation or placement of a significant amount of material requiring a grading permit from the County. Any change to grading or drainage within the Property shall comply with all applicable federal, state and county laws and regulations, the Storm Water CC&Rs and, if applicable, the Pollution Prevention Plan. All surface drainage, including roof drainage of buildings, shall, to the extent possible, be retained within the Unit, and otherwise be designed to conform to the overall drainage plan for the Property. The Declarant hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow to comply with applicable federal, state and county laws and regulations, the Storm Water CC&Rs, the Pollution Prevention Plan, and the LUC Conditions. However, the exercise of such an easement shall not materially diminish the value of any Unit or unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any Unit without the Owner's consent.

10.9 Septic Systems. The use of cesspools within the Property is expressly prohibited. No septic tanks and drain fields, other than IWS/ATS and associated after treatment systems installed on a temporary basis by or with the express written consent of the Declarant as provided in Article 15 below, will be permitted.

10.10 Mechanical Equipment; Storage of Materials; Garbage; Dumping; Etc. Except for Existing Uses and Existing Structures and within the General Industrial Property, all mechanical equipment servicing buildings, outdoor storage areas, garbage cans, trash containers, above-ground tanks and similar items shall be located and screened so as to be concealed from view from adjacent streets within the Industrial Commercial Property, and all such items shall be installed or located in compliance with the applicable Design Guidelines and the Hawaii County Code. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash

or garbage; petroleum products, fertilizers, or other potentially Hazardous or Toxic Substances on the ground or in any drainage ditch within the Property. Fertilizers may be applied to landscaping on Units, provided care is taken to minimize leaching or runoff pursuant to the Pollution Prevention Plan.

Within the Industrial Commercial Property, no refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside of buildings on any Unit, unless screened by improvements approved by the ICDRC, and except during the initial construction period of the improvements to the Unit. In addition, during construction the building materials on any Unit shall be placed and kept in an orderly fashion. Within the General Industrial Property, no refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside of buildings on any Unit except in compliance with the applicable Design Guidelines and except during the initial construction period of the improvements to the Unit. Screening shall not be required in the General Industrial Property.

10.11 Combustible Liquid. There shall be no storage of gasoline, heating or other fuels, except (a) in compliance with applicable laws, rules and regulations and the Pollution Prevention Plan; (b) the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment; and (c) as provided in Section 10.1 and Article 18.

10.12 Loading Docks. All loading docks and truck parking areas within the Industrial Commercial Property must be located and screened in accordance with the applicable Design Guidelines.

10.13 Excavation. No excavation shall be made except in conjunction with construction of an improvement according to plans prepared by a licensed civil engineer and only after having received approval by the applicable DRC. When such improvement is completed, all exposed openings shall be back-filled, compacted, graded and returned to a landscaped or paved condition as approved by the applicable DRC. For purposes of this Section, "excavation" shall mean the excavation of a significant amount of material requiring a grading permit from the County.

10.14 Subdivision of Unit.

(a) No Unit shall be subdivided or its boundary lines changed after a final lot subdivision map has been approved and filed in the Public Records, without the written approval of the Declarant. Contiguous Units under common ownership may, with the Declarant's approval, be consolidated and resubdivided. Declarant hereby expressly reserves the right to consolidate and/or resubdivide any Unit or Units which it owns. Any such subdivision or boundary line change shall not be in violation of the applicable subdivision and zoning regulations, if any.

(b) This Section shall not apply to any Unit within the General Industrial Property so long as all Units resulting from any subdivision, boundary line change or resubdivision of the General Industrial Property has an area of at least one acre, and such subdivision, boundary line change or resubdivision shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.15 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight distance problem.

10.16 Laws and Ordinances. Every Owner, lessee, tenant and occupant of any Unit and their employees, invitees, clients, customers and guests, shall comply with all laws, statutes, ordinances, and rules of federal, state and municipal governments applicable to the Property. The Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

10.17 Highway Buffer Area. The Highway Buffer Area, whether located on individual Units or within Common Areas, shall be designated to provide a visual buffer between the Units and Queen Kaahumanu Highway and as a non-exclusive utility easement area. Active uses of the Highway Buffer Area, including picnics, walking, jogging, running, bicycling, skateboarding and other recreational or social uses, shall be prohibited. There shall be no obstruction of the Highway Buffer Area, nor shall anything be left, parked or stored on any portion of the Highway Buffer Area without the prior written consent of the DRC.

10.18 Quarry Buffer Area. Years of rock quarrying activities within the quarry pit on the Property (the "Quarry") have resulted in a "cut condition" (that is, where the land has "cliff wall" change in grade condition) along the north and east (mauka) portions of the Quarry. The Quarry Buffer Area, being a setback from the vertical "cliff wall" of the quarry pit on the Property has been established over portions of the east and south perimeter of the General Industrial Property as approximately shown on Exhibit "A-2" attached hereto as a safety setback from the top edge of the vertical "cliff wall" of the Quarry. The Quarry Buffer Area will be separated from the adjacent Units located to the east (mauka) and south of the quarry pit by a security fence to be constructed by Declarant to prevent access to the edge of the vertical cliff wall of the quarry pit. No use of the Quarry Buffer Area by Members, including the Owners of the land in the Quarry Buffer Area, or the general public will be permitted. The drawing entitled "Quarry Wall Section Alternate 2" which is attached hereto as Exhibit "A-3" generally illustrates the vertical cliff wall and the Quarry Buffer Area for the east (mauka) boundary of the Property; it being understood and agreed, however, that (i) portions of the existing vertical cliff wall do not conform to the exact dimensions shown on Quarry Wall Section Alternate 2 (Exhibit "A-3") and (ii) each Unit is being conveyed to an Owner, "as is," without any obligation on the part of the Declarant to hereafter regrade any portions of the existing vertical cliff wall to conform to the exact dimensions shown on Quarry Wall Section Alternate 2 (Exhibit "A-3"). Quarry Wall Section Alternate 2 (Exhibit "A-3") shows an approximately 20-foot wide drop zone at the base of the vertical cliff wall with a 10-foot high boulder barrier (the "Boulder Barrier") (as shown on the map attached hereto as Exhibit "A-4"). For the benefit of Declarant and its successors and assigns (as the Owner(s) of the Units adjacent to the Quarry Buffer Area), the Owner of any Unit in the Quarry Buffer Area will maintain, and will not, without the prior consent of the Declarant or its successors or assigns as the Owner(s) of the adjacent Units, or except in those circumstances where such actions are necessary to protect from property damage or personal injury, alter the existing slope condition and the vertical cut of the cliff walls, as well as the Quarry Buffer Area. In addition, if the Boulder Barrier is located within a Unit, the Owner of such Unit covenants on behalf of itself and its successors and assigns for the benefit of Declarant

and its successors and assigns that the Owner will, at its sole expense, construct promptly and thereafter maintain the Boulder Barrier in compliance with the Design Guidelines.

10.19 Soil and Site Conditions; Quarry Wall and Risk of Rock Fall; Quarry Boulder Barrier.

(a) Certain Units include a vertical "cliff wall" from prior quarrying activities on the Property (the "**Quarry Wall**"). The condition of the Quarry Wall presents a risk of rock falls and resulting injury. Without limiting the generality of Section 4.12, neither the Declarant nor the Association makes any representation or warranty, express or implied, as to the condition of the soil or the site condition of the Property, including the suitability of any Unit or the Property for the construction of any type of improvement, or the likelihood or unlikelihood of rock falls and/or resulting injury from the Quarry Wall condition. Accordingly, neither the Declarant nor the Association shall have any liability to any Owner for any liability, loss or expense incurred by any Owner due to defects in the condition of the Owner's Unit which may affect the construction of any type of improvement on the Unit or the potential for rock falls and resulting injury.

(b) Under the Design Guidelines for the construction of any improvements on any Unit affected by the Quarry Wall, the Owners will be required to construct a boulder barrier on the quarry floor as a safety measure as part of the civil engineering plans for the site. If the boulder barrier is not part of the plans, the Owner's plans will not be approved by the Design Review Committee until the boulder barrier is addressed in the plans. If the Owner fails to construct the boulder barrier as part of the site work for the Unit, the Owner will be subject to sanctions as more particularly set forth in this Declaration.

10.20 Cultural Preservation Area. The Cultural Preservation Area, being an area encompassing protected Burial Sites and archaeological features, is a restricted area and a native plant preserve.

10.21 Burial Sites. In addition to the two Burial Sites located within the Cultural Preservation Area, three additional Burial Sites are located on the Property and the adjacent 9.9 acre parcel currently identified by Tax Map Key No. (3) _____. To the extent that a Burial Site is located on a Unit, the Owner shall be responsible for maintenance and security of the archaeological features within the Burial Site. Under provisions of the Burial Treatment Plan, each Burial Site is protected by a Preservation Buffer Zone and concentric setbacks from the edge of the buffer.

In addition to providing for the Preservation Buffer Zone and the related setbacks, permanent rights for ingress and egress must be accorded to descendants to access the burials. For a more complete discussion, please refer to the Burial Treatment Plan.

10.22 Interpretive Site Complex. The Interpretive Site Complex is intended to be kept in a natural state with only occasional maintenance to provide for access and safety.

10.23 Access Roads. At such time as the improvements to the entire Kamanu Street Extension have been completed as a roadway in accordance with county dedicable standards and is available for public use by heavy trucks and heavy equipment (i.e., vehicles or rigs with an

actual vehicle weight over 35,000 pounds), then access for such heavy trucks and heavy equipment of the Owners of the General Industrial Property and their tenants, licensees, and other occupants of the General Industrial Property, shall be by way of the Kamanu Street Extension, and not through the Property to or from Queen Kaahumanu Highway, provided, however, that, at such time, the level of service for access to and from the General Industrial Property and Queen Kaahumanu Highway via the Kamanu Street Extension can be reasonably demonstrated to be equal to or better than access to Queen Kaahumanu Highway through other improved roadways on the Industrial-Commercial Property makai of Kamanu Street. The Owners of the General Industrial Property and their tenants, licensees and other occupants of the General Industrial Property shall endeavor to cause their invitees to also use the Kamanu Street Extension as provided in this Section 10.23. Notwithstanding the foregoing, however, the Owners of the General Industrial Property and their tenants, licensees, invitees and other occupants of the General Industrial Property, shall have the right to use heavy trucks and heavy equipment on the roadways within the Property where the purpose of such use is to make deliveries or provide services to, or pick up materials and supplies from, the Owner or other occupant of a Unit within the Property.

ARTICLE 11 EASEMENTS

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements thereon to a distance of not more than three feet. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Maintenance, Construction, Utility and Drainage Easements. The Owners of all Units recognize and agree that temporary construction and permanent and perpetual maintenance easements and all rights of access reasonably necessary to permit construction and maintenance of the Common Area, including reasonable permanent easements required for installation and maintenance of utilities, roads, walkways, storm water drainage and sewer facilities on the Property are hereby granted to and retained by Declarant for the benefit of Declarant and the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Such easements must be granted and conveyed hereafter by each Owner to Declarant and the Association for the benefit of Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Each Owner, by taking title to its respective Unit, hereby grants and conveys and shall be deemed to have consented and agreed to hereafter designate, grant and convey easements when requested to do so by Declarant or the Association. Each Owner, by taking title to its respective Unit, shall also be deemed to have agreed to obtain from all appropriate parties, including its Mortgagees, the written subordination of any and all Mortgages, security interests and all other liens that encumber or in any way affect its respective Unit to such easements and to all other easements, rights-of-way and rights of ingress, egress, access and passage now set forth in or otherwise provided for in or contemplated by this Article and such written subordination instruments shall be provided promptly and without delay to Declarant and the Association when requested by Declarant or the

Association. Each Mortgagee, and other holders of any mortgage lien and other security interest in any Unit, by accepting a security interest in a Unit, shall be deemed to have consented to and agreed that its mortgage lien or security interest is subject to said easements and agrees to execute any instrument reasonably required to subordinate its debt and security instruments to such easements, rights-of-way and rights of ingress, egress, access and passage subject to the same not materially adversely affecting the Unit serving as the security for the obligations owed to such Mortgagee or noteholder. Such easements will contain terms and conditions reasonably requested by Declarant or the Association, as the case may be, but such easements will not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit. All temporary construction easements, and temporary access rights in connection therewith, of Declarant shall terminate automatically when construction of the Common Area for which such easement is granted or retained is completed, but the permanent and perpetual maintenance easements, and access rights in connection therewith, of Declarant and the Association shall continue in full force and effect except as hereinafter provided. Prior to the Declarant's or the Association's exercise of any easement rights created by this Section, a written instrument defining the location of the respective easement shall be approved by the appropriate governmental entity.

11.3 Additional Easements and Licenses. If Declarant in its sole and absolute discretion determines that additional utility, roadway, drainage or sewer easements or licenses, whether or not contemplated or mentioned in this Declaration, between or across portions of the Property are reasonable, necessary, and desirable to effectuate the purposes of this Declaration, then, upon the request of Declarant, and provided said proposed additional easements and licenses will not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit, each Owner and Mortgagee, if applicable, agrees to grant such additional easements and licenses across its Unit, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between Declarant and such Owner.

11.4 Use of and Limitations on Easements and Licenses. The Owners of Units benefited by the easements and licenses specified in Sections 11.1 and 11.3 (if any and to the extent additional easements or licenses under Section 11.3 are for the benefit of Unit Owners) of this Declaration and those other persons granted rights herein shall be entitled to use and enjoy said easements and licenses in common with others entitled to use same and shall take no action in or with respect to any of said easements and licenses which would interfere with the rights of other persons to use said easements and licenses or to enjoy the benefits therefrom.

11.5 Easements to Serve Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees and Mortgagees, an easement on the Common Area for the purposes of enjoyment, use, access and development of the Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities and improvements on such property. In addition, Declarant reserves the non-exclusive right and power to designate such specific easements on the Property as maybe necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A", provided said easements will not unreasonably interfere with the development, use and occupancy of any

Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any such Unit.

11.6 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents applicable to such Unit. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, members of the applicable DRC pursuant to Article 9, and all police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. In addition, entry onto General Industrial Property shall take into account the on-going operations at such property. The Owner shall not bring any cause or action or claim against the Association, the Board, the Association's officers, agents, employees, and managers, or members of the applicable DRC, for the Association's exercise of its rights under this Section 11.6.

ARTICLE 12 MORTGAGEE PROVISIONS

12.1 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of any Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.2 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.3 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Board does not receive a written response from the Mortgagee within 30 Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested. Notwithstanding the foregoing, however, neither the action described in such request nor the failure of the Mortgagee to respond to the Board's request shall impair or be deemed to impair the lien of the Mortgage or the lien, rights and security of the Mortgagee thereunder.

ARTICLE 13 DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned from time to time, in whole or in part, to one or more Persons, including the Association, which will assume the position of Declarant pertaining to the particular rights, powers, easements and reservations assigned, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be

effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. There may be more than one "Declarant" hereunder at any one time.

The Declarant may maintain and carry on upon portions of the Property such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development, construction or sale of Units, including, but not limited to, signs. The Declarant and its designees shall have easements for access to and use of such facilities. However, the exercise of such rights shall not materially diminish the value of any Unit or unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any Unit.

During the Class "B" Control Period, no Person shall record any declaration of condominium property regime or similar instrument affecting any portion of the Property to create a condominium project without Declarant's review and written consent.

Any Person recording any covenants, conditions and restrictions or similar instrument affecting any portion of the Property shall give a copy thereof to Declarant. Any additional covenants or restrictions affecting any portion of the Property recorded by any party other than Declarant may not be less restrictive than the terms and conditions of this Declaration.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions or any Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Property primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded in the Public Records, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE 14 GENERAL PROVISIONS

14.1 Successors and Assigns; Duration; No Rights of Third Parties. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be binding upon the Association, any Owner of any property subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of thirty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by Members holding at least 67% of the total Class "A" votes (as weighted) in the Association, including 67% of the Class "A" votes (as weighted) held by Members other than the Declarant, and the Declarant, so long as the Declarant owns any portion of the property described in Exhibit "A" for development as part of the Property, has been recorded within the year preceding the beginning of each successive period of ten years, agreeing (subject to Sections 14.2(c) and 18.10) to change said covenants and restrictions, in whole or in part, or to

terminate the same, in which case this Declaration shall be modified or terminated as specified therein. No adjoining property owner or third party shall have any right, title or interest whatsoever, in the Property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof.

14.2 Amendment.

(a) By Declarant. Declarant may unilaterally amend this Declaration in any manner if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements legally imposed by any local, state or federal governmental agency. However, any such amendment shall not have a material adverse effect on the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns any portion of the property described in Exhibit "A", Declarant may unilaterally amend this Declaration for any other purpose, including, without limitation, for the purpose of amending the description of the Property with the description of the Units after subdivision thereof or to withdraw any portions of the Property to be dedicated or otherwise transferred to a governmental entity or utility company, provided said amendment will not unreasonably interfere with the development, use and occupancy of any Unit, unreasonably affect access to, or operation of, any such Unit, or materially increase the operating costs of any Unit.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least 67% of the total Class "A" votes (as weighted) in the Association, including 67% of the Class "A" votes (as weighted) held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant owns any portion of the property described in Exhibit "A" for development as part of the Property. Notwithstanding the above, (i) the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause, and (ii) any amendment of Sections 1.28 or 1.37 will require the affirmative vote or written consent of all of the Class "A" Members and the consent of the Declarant, so long the Declarant owns any portion of the property described in Exhibit "A" for development as part of the Property.

(c) Validity and Effective Date. Any amendment to this Declaration shall become effective upon recordation of the amendment and any required consent in the Public Records, unless a later effective date is specified in the amendment or the consent. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or

the assignee of such right or privilege. Notwithstanding any other term or provision of this Declaration, any amendment by either Declarant or the Members (i) of Article 18 hereof, or (ii) that removes, revokes, or modifies the Parcel 74 Owner's consent right under this Section 14.2(c), shall require the written consent of the Parcel 74 Owner, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding 75% of the total Class "A" votes (as weighted) in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration and/or to enforce the other Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.5 Intentionally Deleted.

14.6 Cumulative Effect. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. The Association shall have the standing and authority to enforce the provisions of any Supplemental Declaration.

14.7 Use of the Words "West Hawaii Business Park". No Person shall use the words "West Hawaii Business Park" in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "West Hawaii Business Park" in printed or promotional matter where such terms are used solely to specify that particular property is located within the West Hawaii Business Park development and the Association shall be entitled to use the words "West Hawaii Business Park" in its name.

14.8 Compliance. Except as otherwise specifically provided in this Declaration, every Owner and occupant of any Unit shall comply with the Governing Documents as the same may be applicable to such Unit or the Owner and occupant. Failure to comply with this Declaration, all Supplemental Declarations, the By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs, and the rules of

the Association, as the same may be applicable to a Unit, shall be grounds for an action by the Association to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3. In any legal or equitable proceeding for the enforcement of or to remedy the violation of these covenants or any provision hereof by the Association, the losing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Unit (if any) of the losing party. All remedies provided herein and/or otherwise available, at law or in equity, to the Association shall be cumulative and not exclusive.

14.9 Exclusive Right of the Association and Declarant. The Association, acting through the Board or the covenants committee if established, and the Declarant during the Class "B" Control Period, shall have the exclusive right to enforce the terms, covenants, conditions and restrictions contained in the Governing Documents, as the same may be applicable to a Unit, as provided in this Declaration.

14.10 Notice of Sale or Transfer of Title. Any Owner that sells or otherwise transfers title to its Unit shall give (or cause to be given) to the Board, not later than seven Days after the date of the closing or transfer, written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.11 Exhibits. Exhibits "A", "A-1", "A-2", "A-3", "A-4", "B", "C" and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. All other exhibits are attached for informational purposes and may be amended as provided therein.

14.12 Limitation on Liability. Each Owner, by accepting title to any portion of the Property and becoming an Owner, acknowledges and agrees that the Declarant shall not have any personal liability to the Association or to any Owner, Member or other Person arising under, in connection with or resulting from this Declaration or the Association, except to the extent of the Declarant's interest in the Property. It is further acknowledged and agreed that in the event of a judgment against the Declarant, no execution or other action shall be sought or brought thereon against any asset of the Declarant other than the Declarant's interest in the Property.

ARTICLE 15 WASTEWATER

15.1 As required by the LUC Conditions, the Property shall be developed with dry sewer lines for eventual connection to the Kealahou Wastewater Treatment Plant ("WWTP"). All Units in the Property shall be required to connect to the WWTP, when the North Kona Sewer Collection System is available. The LUC Conditions require Declarant or its successors and assigns to collaborate with the County of Hawaii to include the Property within an improvement district, if one is developed to fund the construction of the connection to the WWTP. Each

Owner shall pay for its fair share of the cost to fund the North Kona Sewer Collection System, whether or not an improvement district is established and such cost shall be Common Expenses of the Association and assessed in accordance with Article 8.

15.2 As required by the LUC Conditions, except for the existing quarry operations on the General Industrial Property, and the construction of the roads and utilities as provided for in the LUC Conditions, each Owner shall not construct upon or occupy any Unit until such time as the Unit to be constructed upon or occupied is connected to the WWTP, unless in the interim, the Unit to be constructed upon or occupied has installed an enhanced septic tank system with a Fixed Activated Sludge Treatment (or FAST) unit, or an alternative treatment system (Biofilter, Recirculation Filters, Sequential Batch Reactor or comparable technology) ("IWS/ATS") designed to remove no less than 80% Total Nitrogen and an "after treatment system" such as an absorption field of import material which is constructed in a manner to achieve no less than 90% reduction in phosphorous featuring adequate percolation rate. Utilization of the IWS/ATS described above in this Section 15.2 shall be limited to no more than 36 Units designated by the Declarant or its successor or designee. Septic tank systems or other individual wastewater systems, other than IWS/ATS installed by or with the express written consent of the Declarant, are prohibited within the Property. The existing quarry operation shall have in place an IWS/ATS as described above no later than the deadline imposed by the LUC Conditions, as such deadline may be extended by LUC. Installation is subject to conditions of approval dictated by the Director of DOH and HAR Title 11 Chapter 62. When connection to the WWTP becomes available, the entire Property, including all Units therein, shall connect to the WWTP, whether or not an interim wastewater treatment system has been installed.

15.3 As required by the LUC Conditions, each Owner of the IWS/ATS shall certify with the DOH that the IWS/ATS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS/ATS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

15.4 As required by the LUC Conditions, before constructing upon or occupying any portion of a Unit, each Unit Owner entitled to use an IWS/ATS shall enter into an IWS/ATS Maintenance Agreement that shall provide for regular service to ensure safe and effective operation and maintenance of the IWS/ATS installed within the Unit, whether shared or individual, except that the existing quarry operation shall comply with this requirement by the deadline imposed by the LUC Conditions for the IWS/ATS to be in place for such operations. Necessary repairs shall be performed promptly and record of repairs shall be kept. This requirement shall be included in the conditions of sale of any Unit.

ARTICLE 16

POLLUTION PREVENTION

16.1 There is an existing quarry operation on the General Industrial Property. Any further public or private industrial development within the Property which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and

subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

16.2 Except for the existing quarry operation on the General Industrial Property and the construction of roads and utilities, the Pollution Prevention Plan addresses each of the types of uses permissible on the Property, by specifically designating Best Management Practices tailored to each such specific use. Each Owner shall comply with all of the applicable provisions of the Pollution Prevention Plan, which are hereby incorporated by reference and made a part hereof. Except for the existing quarry operation on the General Industrial Property and the construction of roads and utilities, in the event that a specific use is proposed for a Unit that is not specifically addressed in the Pollution Prevention Plan, the Owner(s) proposing such use shall consult with the National Park Service to establish a set of Best Management Practices appropriate for such proposed use and consistent with the goal of preventing any and all pollutants from being released into the environment.

16.3 Each Owner shall provide signage for all drainage/injection wells in its Unit with warnings such as the following: DUMP NO WASTES. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be either stand-up (legible from at least 30 feet, permanently posted at an effective and safe height) or painted on the ground next to the drainage well's inlet.

16.4 For parking areas, all large vehicles such as buses, trucks or construction equipment shall utilize drip pans to avoid release of petroleum onto paved or graveled surfaces or, in the alternative, all parking areas for large vehicles shall include grassed or vegetative swales to capture drainage from such parking areas. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid build up of oil or other automotive fluids. As required by the LUC Conditions, protocols for cleaning parking areas are set out in the Pollution Prevention Plan. Maintenance work other than emergency work on vehicles is banned in parking areas.

16.5 Where site geometry permits, each Unit Owner shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales to capture storm water drainage from all perimeter lots, facilities, and parking areas of its Unit. For all vegetative swales, the Unit Owner shall apply only the minimum required nutrients (fertilizer) to maintain the vegetation without causing significant nutrient runoff, and the water used for irrigation purposes shall not exceed the amount necessary to maintain the vegetation.

16.6 Declarant hereby notifies each Owner, lessee, tenant and other user of the Property, or any portion thereof, of the existence of the National Park System Resource Protection Act, 16 U.S.C. Sections 1911-1911-4, and the consequences of violation of such act. In particular, each Unit Owner is hereby notified that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.

16.7 All drainage injection wells (including drywells) or subsurface drainage structures within the Property shall be designed with an appropriate size debris catch basin (FloGuard Insert Filter) to allow the detention and periodic removal of rubbish and sediments deposited by

runoff. Storm water shall enter the debris catch basin before flowing into the drainage well. The debris catch basin shall be periodically inspected and cleaned.

ARTICLE 17

LUC AND ZONING CONDITIONS

17.1 LUC and Zoning Conditions Generally. Each Owner acknowledges that the Property, including each Unit, is subject to the LUC Conditions and the Zoning Conditions, and the various other Governing Documents applicable to such Unit created pursuant to the LUC Conditions and Zoning Conditions. Each Owner agrees on behalf of itself, its lessee and tenants, to observe and perform the provisions of the Governing Documents applicable to the Owner's Unit, including without limitation, the provisions of this Article 17 and every Owner shall be responsible for all violations of the Governing Documents applicable to such Owner's Unit and any losses to the Common Area caused by such violations. In the event of any conflict between the terms and provisions of the LUC Conditions and/or the Zoning Conditions, on the one hand, and the terms and provisions of this Declaration, any Supplemental Declaration, the By-Laws, the Articles of Incorporation or a rule of the Association, on the other, then, in every such case, the terms and provisions of LUC Conditions and/or the Zoning Conditions, as the case may be, shall control and supersede the conflicting term or provision of this Declaration, any Supplemental Declaration, the By-Laws, the Articles of Incorporation or rule of the Association.

17.2 Storm Water CC&Rs. Each Owner shall comply with the provisions of the Storm Water CC&Rs that are applicable to Owner or Owner's Unit.

17.3 Ground Water Quality Monitoring. Any contribution required by the Declarant or the Property under Condition 4 of the LUC Conditions relating to a groundwater monitoring program of USGS Wells 4161-01, 4161-02 and 4061-01, Aimakapa Pond, Kaloko Pond and two (2) other anchialine ponds of KAHŌ National Park as identified by the National Park Service shall be Common Expenses of the Association and assessed in accordance with Article 8.

17.4 Transportation. Any cost incurred by the Declarant or the Property after the date of this Declaration under Condition 6.a of the LUC Conditions shall be Common Expenses of the Association and assessed in accordance with Article 8. Declarant, for so long as the Class "B" membership exists, and thereafter, the Association, shall participate and collaborate in a regional transportation planning committee to be established by the County of Hawai'i as contemplated by LUC Condition No. 6.d.

17.5 Intentionally Deleted.

17.6 Archaeological/Historical Sites. Each Owner shall comply with the applicable provisions of the Archaeological Preservation Plan and the Burial Treatment Plan and all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Property. Should any previously unidentified burial, archaeological or historical sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, each Owner and/or its employees, agents, or contractors, of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources ("SHPD") shall be notified immediately. The

significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to SHPD's satisfaction.

17.7 Landscaping. Each Owner shall comply with the landscaping plan and other requirements for landscaping set out in the Design Guidelines and LUC Conditions 10.a through 10.h. that are applicable to Owner or Owner's Unit.

17.8 Soil Erosion and Dust Control. Each Owner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of DOH.

17.9 Solid Waste. Each Owner shall comply with the provisions of the Solid Waste Management Plan that are applicable to Owner or Owner's Unit.

17.10 Final Plan Approval. Prior to construction on the Owner's Unit, in addition to obtaining any required approval of the applicable DRC as provided in Article 9 above, the Owner shall secure Final Plan Approval from the County Planning Department for the proposed development of the Unit as required by the Zoning Conditions.

17.11 Storm Drainage Program. Each Owner shall comply with any requirements that are applicable to Owner or Owner's Unit of a pilot storm drainage program contemplated by Zoning Condition O to address and mitigate potential impacts from non-point source pollutants.

17.12 Emergency Response Plan. Each Owner shall comply with any requirements of the Emergency Response Plan that are applicable to Owner or Owner's Unit.

ARTICLE 18 PARCEL 74

18.1 Applicability of the Governing Documents. Except as specifically provided in this Article 18 or the Governing Documents, Parcel 74, and any Units hereafter created within Parcel 74, and the Parcel 74 Owner, and the Owners of any Units hereafter created within Parcel 74, shall be, to the extent applicable to Parcel 74 and/or the Parcel 74 Owner, subject to, and bound by, the terms, easements, restrictions, covenants and conditions of the Governing Documents, and any amendments or supplements thereto.

18.2 Exceptions. Unless and until declared otherwise by a recorded instrument executed by the Parcel 74 Owner, or any successor, successor-in-title, or assignee of the Parcel 74 Owner, the following provisions of this Declaration **shall not** apply to or bind any Unit within Parcel 74 or the Owner of any such Unit within Parcel 74 as provided below:

(a) **Sections 6.2 and 10.5** shall not apply to any Existing Uses and Existing Structures.

(b) The prohibition on storage, disposal, incineration, treatment, processing or other use of Hazardous or Toxic Substances set out in **Section 10.1(b)(ii)** shall not apply to Parcel 74 to the extent the same are incident to Existing Uses, Existing Structures or uses permitted in the County of Hawaii (MG) General Industrial District zone not otherwise

prohibited by this Declaration, and where such Hazardous or Toxic Substances are stored, disposed of, incinerated, treated, processed or otherwise used, in conformance with the applicable provisions of the Pollution Prevention Plan and the laws, rules, regulations and requirements of all applicable governmental authorities.

(c) The provisions of Sections **10.1(b)(iii)** and **(v)** shall not apply to the Existing Uses and Existing Structures.

(d) The provisions of **Section 10.2** shall not apply to any signs existing on Parcel 74 on the date of recording in the Public Records of the deed conveying fee simple title to Parcel 74 by Declarant to the Parcel 74 Owner.

(e) The provisions of **Section 10.3** shall not apply to any parking on Parcel 74 related to any Existing Uses and Existing Structures.

(f) The prohibition in **Section 10.7** shall not apply to any Existing Uses and Existing Structures.

18.3 Parcel 74 Common Areas. Notwithstanding **Section 1.14** of this Declaration, to the extent the Parcel 74 Owner designates any common areas within Parcel 74, i.e., real or personal property, including easements, for the common use and enjoyment of all of the Owners of Units within the Property, the Parcel 74 Owner or its designees may, if acceptable to the Association in the Association's sole and absolute discretion, convey such areas to the Association and upon such conveyance to and acceptance by the Association, such Common Area shall be maintained by the Association at its expense for common use and the benefit of its Members, subject to any restrictions accepted by the Association as may be set forth in the deed or other instrument transferring such Common Area to the Association.

18.4 Enforcement. **Section 4.3(c)(i)** of this Declaration provides that after the expiration of the Class "B" Control Period pursuant to Article 3 of the By-Laws, only the Board, or the covenants committee if established, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members, or the GIDRC (with the approval of such Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members) shall have the authority to exercise any sanctions, entry, self-help, suit or other rights and remedies authorized under Section 4.3 against an Owner of General Industrial Property for violation of various sections and articles of this Declaration. In addition to such Sections and Articles set out in Section 4.3(c)(i), so long as there are Existing Uses on Parcel 74 if it is not subdivided into further Units, or if Parcel 74 has been subdivided into further Units, then as to any such Units on which there are Existing Uses, only the Board, or the covenants committee if established, with the approval of the Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members, or the GIDRC (with the approval of such Majority of the member(s) of the Board that were elected by the Class "A (General Industrial)" Members) shall have the authority to exercise any sanctions, entry, self-help, suit or other rights and remedies authorized under Section 4.3 against the Parcel 74 Owner or the Owner of such Unit on which there are Existing Uses for violation of the covenants in (a) **Section 10.16** to comply with all laws, statutes, ordinances, and rules of federal, state and municipal government applicable to Parcel 74 that are not otherwise specifically addressed in

this Declaration; (b) **Section 17.1** to observe and perform the provisions of the LUC Order and the Zoning Ordinance applicable to the Owner's Unit that are not otherwise specifically addressed in this Declaration; and (c) **Section 17.2** to comply with the provisions of the Storm Water CC&Rs that are applicable to Owner or Owner's Unit that are not otherwise specifically addressed in this Declaration. With respect to violations of laws, statutes, ordinances, and rules of federal, state and municipal government, the LUC Order, the Zoning Ordinance or the Storm Water CC&Rs applicable to Parcel 74 that are specifically addressed in this Declaration, including without limitation, those contained in Section 10.1(a), Section 10.9, Articles 15 and 16, Sections 17.3 through 17.6 and 17.8 through 17.12, the Board can act without such Majority approval.

18.5 Association Entry. Notwithstanding the provisions of **Article 5** and **Section 11.6**, so long as there are Existing Uses on Parcel 74 (if it is not subdivided into further Units) or on any Units hereafter created within Parcel 74, the Association shall not have the right to enter upon Parcel 74 as a whole or any such Units within Parcel 74 on which there are Existing Uses to perform maintenance pursuant to Article 5 except for maintenance to any Area of Common Responsibility within Parcel 74.

18.6 Existing Uses and Existing Structures Insurance. With respect to the Existing Uses and Existing Structures, the Parcel 74 Owner covenants and agrees with all other Owners and with the Association to obtain or cause its tenant(s) to obtain liability insurance with limits of not less than \$1,000,000.00.

18.7 Date of Commencement of Parcel 74 Assessments. The obligation of Parcel 74 and the Parcel 74 Owner to pay assessments under **Article 8** of this Declaration shall commence on the first Day after the Property consists of at least three (3) Units and at least one (1) such Unit is conveyed to an Owner that is not the Declarant, the Parcel 74 Owner, or Jas. W. Glover Holding Company, Ltd. or any of its affiliated companies. The one-time contribution under **Section 8.8** shall not be levied on Parcel 74 before such date for commencement of assessments. **Section 8.7** and **Section 8.8** of this Declaration are hereby amended as to Parcel 74 to conform to this Section 18.7.

18.8 Architectural Standards. Except for alterations to grading as described in Section 10.8 of this Declaration, and excavations as described in Section 10.13, **Sections 9.1, 9.2, 9.3 and 9.7** shall not apply to the Existing Uses and Existing Structures and Exempt Alterations (as defined below). **Sections 9.1, 9.2, 9.3 and 9.7** shall apply to alterations to grading as described in Section 10.8 of this Declaration, excavations as described in Section 10.13 of this Declaration, any modification to Existing Structures and/or any new improvements on Parcel 74, except Exempt Alterations. As used in this section (a), "**Exempt Alterations**" shall mean the following:

- (i) changes in exterior color so long as they are within the applicable DRC's approved color palette;
- (ii) changes to the interior of the Existing Structures and approved improvements on Parcel 74;

(iii) changes to the Existing Structures (other than the existing batch plants (asphalt and concrete)) which do not increase by more than ten percent (10%) the footprint, elevation, outline or building mass of the Existing Structures; and

(iv) changes to the existing batch plants (asphalt and concrete) which do not increase by more than twenty-five percent (25%) the footprint or elevation of such existing batch plants.

18.9 Parcel 74 Owner's Rights. The special rights and privileges of the Parcel 74 Owner set forth in this Article 18 and other sections of this Declaration may be transferred or assigned from time to time, in whole (but not in part), to one or more Persons who is a Parcel 74 Owner as defined in Article 1 above, and who assumes the position of the Parcel 74 Owner pertaining to the rights and privileges assigned, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Parcel 74 Owner has under this Article or this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Parcel 74 Owner and duly recorded in the Public Records, and further provided that for purposes of this Declaration, there shall never be more than one "Parcel 74 Owner" hereunder at any one time.

18.10 Amendments.

(a) Notwithstanding any other term or provision of this Declaration, any Supplemental Declaration, the By-Laws, the Articles or any rules of the Association to the contrary, the easements, restrictions, covenants and conditions of this Declaration shall only apply to and bind Parcel 74 and the Parcel 74 Owner to the extent expressly provided in this Declaration.

(b) No Person shall record any further declaration of covenants, conditions and restrictions or similar instrument affecting any portion of Parcel 74, other than any Areas of Common Responsibility or Burial Sites within Parcel 74, without the Parcel 74 Owner's review and written consent. Any rules adopted by the Association purporting to limit, regulate or otherwise restrict any Existing Use or Existing Structure within or upon Parcel 74, other than any Areas of Common Responsibility or Burial Sites within Parcel 74, shall be of no force and effect as to Parcel 74 unless subsequently approved by a written consent signed by the Parcel 74 Owner. Any (i) additional covenants or restrictions recorded by any party other than the Parcel 74 Owner with respect to the Property, (ii) rules adopted by the Association with respect to the Property, and (iii) amendments of the covenants or restrictions set forth in this Declaration may not be, in their application to Parcel 74, any Unit within Parcel 74, the Parcel 74 Owner or the Owner of any Unit within Parcel 74, more restrictive than the terms and conditions of (x) this Declaration as of the date this Declaration is recorded in the Public Records, (y) the LUC Conditions, or (z) the Zoning Conditions, without the Parcel 74 Owner's review and written consent. Any attempted recordation, adoption or amendment in such case without the written consent of the Parcel 74 Owner shall result in such covenants, restriction, rule or amendment being void and of no force and effect as to Parcel 74 and the Parcel 74 Owner unless subsequently approved by the written consent signed by the Parcel 74 Owner and recorded in the Public Records.

(c) Notwithstanding any contrary provisions of this Declaration, no amendment to or modification of this Declaration that changes the General Industrial Property classification of any portion of Parcel 74, other than any Areas of Common Responsibility or Burial Sites within Parcel 74, shall be effective without prior notice to and the written approval of the Owner of such portion of Parcel 74.

(d) Notwithstanding any contrary provisions of this Declaration, no amendment to or modification of this Article 18 shall be effective without prior notice to and the written approval of the Parcel 74 Owner so long as the Parcel 74 Owner owns any portion of Parcel 74. The Parcel 74 Owner may, at any time and from time to time, amend this Article 18 to terminate or waive, in whole or in part, any right, privilege or benefit enjoyed or held by Parcel 74 or the Parcel 74 Owner, such termination or waiver to be evidenced by a written instrument signed by the Parcel 74 Owner and recorded in the Public Records.

(e) Notwithstanding any contrary provisions of this Declaration, no amendment to or modification of the following shall apply to Parcel 74 and/or the Parcel 74 Owner unless subsequently approved by a written consent signed by the Parcel 74 Owner, which consent may be recorded in the Public Records:

(i) Sections 1.25, 1.26, 1.55, 1.56, 4.3(c)(i), 5.2(d)(i), 9.7(b)(i), 10.1(c), 10.14(b) of this Declaration;

(ii) The exception for petroleum products that is contained in **Section 10.1(b)(ii) and 10.11(c)**.

(iii) The exception for Existing Uses and Existing Structures and within the General Industrial Property that is contained in the first sentence of **Section 10.10**.

(f) Any amendment that deletes or materially and adversely modifies the provisions of this Declaration that provide an exception for or special treatment of Existing Uses, Existing Structures and/or the existing quarry operations, shall not apply to any portion of Parcel 74 on which is located an Existing Use or Existing Structure or the existing quarry operations, as the case may be, unless subsequently approved by a written consent signed by the Parcel 74 Owner, which consent may be recorded in the Public Records.

(g) Any amendment or modification of this Declaration that will have a disproportionate material adverse effect on Parcel 74 as compared to other General Industrial zoned lots in the Property shall not apply to Parcel 74 or the Parcel 74 Owner, unless subsequently approved by a written consent signed by the Parcel 74 Owner, which consent may be recorded in the Public Records.

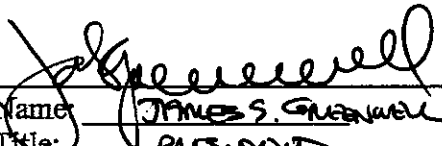
Except as restricted by Section 10.23 of this Declaration, in the event Parcel 74, any Unit within Parcel 74, the Parcel 74 Owner or the Owner of any Unit within Parcel 74 shall be assessed (whether by the Association, any governmental or quasi-governmental entity, the Declarant or any other Person) for the cost and expense of the construction, installation, reconstruction or restoration of any roadway within the Property, no provision of any Governing Document, or any amendment or modification of any Governing Document, shall prohibit the use of such roadway

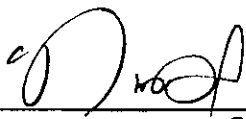
by Parcel 74, any Unit within Parcel 74, the Parcel 74 Owner or the Owner of any Unit within Parcel 74 so assessed, or their tenants, licensees or other occupants.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the
17 day of December, 2008.

DECLARANT:

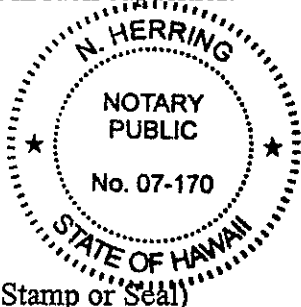
WEST HAWAII BUSINESS PARK LLC, a
Hawaii limited liability company

By: 
Name: JAMES S. GRAWELL
Title: PRESIDENT

By: 
Name: NORMAN S. HON
Title: V-PRESIDENT

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

On this 18 day of December, 2008, before me personally appeared James S. Greenwell and Norman S. Hom, to me known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such person and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Signature: N. Herring
Print Name: N. Herring
Notary Public, State of Hawaii

(Official Stamp or Seal)

My commission expires: April 22, 2011

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of
Covenants, Conditions and Restrictions for
West Hawaii Business Park

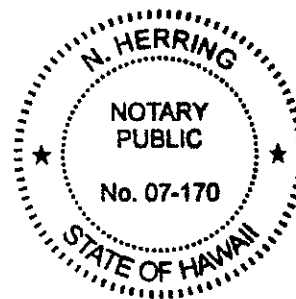
☒ Doc. Date: 12/17/08 or ☐ Undated at time of notarization

No. of Pages: 123 total Jurisdiction: First Circuit
(incl. title page, index, (in which notarial act is performed)
notary page, exhibits)

Signature of Notary

Date of Notarization and
Certification Statement

N. Herring
Printed Name of Notary



(Official Stamp or Seal)

LOT A-1-A

BEING A PORTION OF ROYAL PATENT 7587, LAND COMMISSION AWARD 11216,
APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138)

AT HONOKOHAU 1ST, NORTH KONA, ISLAND OF HAWAII, HAWAII

Beginning at the northwest corner of this parcel of land, same being also the north corner of Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System, Zone 1 being 310,410.36 feet North and 321,770.62 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------|
| 1. | 259° 01' 40" | 593.64 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 2. | 349° 01' 40" | 596.91 | feet along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 3. | 260° 55' 30" | 525.68 | feet along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 4. | Thence along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being: | | |
| | | 244° 08' 46.9" | 25.98 feet; |

-1-

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5. Thence along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:
250° 33' 58.4" 35.45 feet;
6. 170° 55' 30" 265.00 feet along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
7. 260° 55' 30" 645.08 feet along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
8. 152° 40' 40" 345.76 feet along Lot A-2, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
9. 260° 55' 29" 367.55 feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha;
10. 331° 21' 32" 3,433.20 feet along Lot B, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
11. 78° 15' 10" 2,678.18 feet along Lots 14, 13, 8, 7, 6 and 5, being portions of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku;
12. 159° 10' 40" 362.33 feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
13. Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 970.00 feet, the chord azimuth and distance being:
162° 34' 45" 115.10 feet;

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|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14. | 165° 58' 50" | 830.70 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 15. | Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 1,030.00 feet, the chord azimuth and distance being: | | |
| | 156° 23' 22.5" | 343.22 feet; | |
| 16. | 146° 47' 55" | 530.13 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 17. | Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 970.00 feet, the chord azimuth and distance being: | | |
| | 157° 54' 47" | 373.97 feet; | |
| 18. | 169° 01' 39" | 162.14 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 19. | Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: | | |
| | 213° 32' 28.5" | 42.07 feet; | |
| 20. | 168° 03' 18" | 9.00 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 21. | 170° 49' 55" | 42.05 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |

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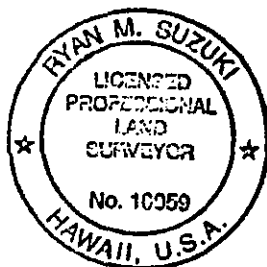
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22. 168° 03' 18" 9.00 feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
23. Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
- 123° 32' 28.5" 42.79 feet;
24. 169° 01' 39" 571.14 feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) to the point of beginning and containing an area of 170.886 Acres; and

SUBJECT, HOWEVER, to the following:


EASEMENT R-1 (Access and Utility Purposes) in favor of Lot A-2 as shown on map prepared by Russell Figueiroa, Subdivision Number 7874 approved on October 20, 2004.

73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
August 3, 2007



R. M. TOWILL CORPORATION

Description prepared by:


Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10,059
Expiration Date: April 30, 2008

- 4 -

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BEING PORTIONS OF ROYAL PATENT 7587, LAND COMMISSION AWARD 11216,
APANA 36 TO M. KEKAUONOHU (CERTIFICATE OF BOUNDARIES NUMBER 138) AND
GRANT S-15096 TO LANIHAU CORPORATION, ET. AL.

Beginning at the northwest corner of this parcel of land and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,073.83 feet North and 320,034.85 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 259° 01' 40" | 1,708.09 | feet along Lots 57 and 17 of Kaloko Light Industrial Subdivision Unit 1 (File Plan 1806), Kanalani Street, Lot A, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha, Lots 53 and 52 of Kaloko Light Industrial Subdivision Unit 1 (File Plan 1806), Lots 50-A and A, being portions of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 2. | 349° 01' 39" | 573.18 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 3. | Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: | | |
| | | 33° 32' 28.5" | 42.07 feet; |
| 4. | 348° 03' 18" | 9.00 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |

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|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13. | 81° 04' | 589.92 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 14. | 73° 20' | 334.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 15. | 111° 22' | 60.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 16. | 69° 22' | 89.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 17. | 3° 32' | 54.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 18. | 72° 51' | 823.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al; |
| 19. | Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being: | | |
| | | 161° 54' 45" | 1,250.50 feet; |
| 20. | 167° 59' 30" | 1,175.19 | feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352) to the point of beginning and containing an area of 95.387 Acres; and |

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RESERVING, HOWEVER, the following:

EASEMENT L-1
FOR "NO VEHICULAR ACCESS" PLANTING SCREEN PURPOSES
BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138)

Beginning at the north corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,073.83 feet North and 320,034.85 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 259° 01' 40" | 10.00 | feet along Lot 57 of Kaloko Light Industrial Subdivision Unit 1 (File Plan 1806); |
| 2. | 347° 59' 30" | 928.00 | feet; |
| 3. | 77° 59' 30" | 10.00 | feet; |
| 4. | 167° 59' 30" | 928.18 | feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352) to the point of beginning and containing an area of 0.213 Acre; |

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BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138)

| | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 257° 59' 30" | 10.00 | feet; |
| 2. | 347° 59' 30" | 127.01 | feet; |
| 3. | Thence on a curve to the left with a radius of 5,894.00 feet, the chord azimuth and distance being: | | |
| | | 345° 35' 45" | 492.77 feet; |
| 4. | 73° 12' | 10.00 | feet; |
| 5. | Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being: | | |
| | | 165° 35' 45" | 493.61 feet; |
| 6. | 167° 59' 30" | 127.01 | feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352) to the point of beginning and containing an area of 0.142 Acre; and |

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EASEMENT L-3
FOR "NO VEHICULAR ACCESS" PLANTING SCREEN PURPOSES

BEING PORTIONS OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138) AND
GRANT S-15096 TO LANIHAU CORPORATION, ET. AL.

Beginning at the south corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 307,735.65 feet North and 320,667.59 feet East and thence running by azimuths measured clockwise from true South:

1. Along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being:

158° 47' 19" 608.78 feet;
2. 251° 44' 38" 10.00 feet;
3. Thence on a curve to the left with a radius of 5,894.00 feet, the chord azimuth and distance being:

338° 46' 57.5" 608.98 feet;
4. 72° 51' 10.08 feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al. to the point of beginning and containing an area of 0.140 Acre; and

SUBJECT, HOWEVER, to the following:

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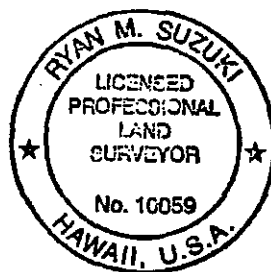
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EASEMENT R-1 (Access and Utility Purposes) in favor of Lot A-2 as shown on map prepared by Russell Figueiroa, Subdivision Number 7874 approved October 20, 2004.

73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
August 3, 2007



R. M. TOWILL CORPORATION

Description prepared by:



Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10,059
Expiration Date: April 30, 2008

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BEING PORTIONS OF ROYAL PATENT 7587, LAND COMMISSION AWARD 11216,
APANA 36 TO M. KEKAUONOHU (CERTIFICATE OF BOUNDARIES NUMBER 138) AND
GRANT S-15096 TO LANIHAU CORPORATION, ET.AL.

Beginning at the northeast corner of this parcel of land, same being also the southeast corner of Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System, Zone 1 being 308,137.26 feet North and 322,522.16 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 345° 58' 50" | 504.80 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 2. | Thence along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 1,030.00 feet, the chord azimuth and distance being: | | |
| | | | 342° 34' 45" 122.22 feet; |
| 3. | 339° 10' 40" | 352.74 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 4. | 78° 15' 10" | 690.90 | feet along Lot 3, being a portion of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku; |

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- | | | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | 78° 15' 30" | 1,000.00 | feet along Lot A-3, being portions of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku and all of Grant S-15098 to Lanihau Corporation, et. al.; |
| 6. | 148° 10' | 213.70 | feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352); |
| 7. | Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being: | | |
| | 150° 33' | 491.04 feet; | |
| 8. | 236° 48' | 340.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 9. | 191° 56' | 139.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 10. | 253° 13' | 408.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 11. | 253° 50' | 144.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 12. | 254° 19' | 309.00 | feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |

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13. 259° 36' 595.49 feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al. to the point of beginning and containing an area of 37.703 Acres; and

RESERVING, HOWEVER, the following easement:

EASEMENT L-5
FOR "NO VEHICULAR ACCESS" PLANTING SCREEN PURPOSES
BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138)

Beginning at the southeast corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 306,857.08 feet North and 321,150.91 feet East and thence running by azimuths measured clockwise from true South:

1. 148° 10' 213.70 feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352);
2. Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being:
150° 33' 491.04 feet;
3. 236° 48' 10.06 feet along Lot A-1-D (Cultural Preservation Purposes), being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;

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4. Thence on a curve to the left with a radius of 5,894.00 feet, the chord azimuth and distance being:

330° 33' 19" 491.29 feet;

5. 328° 10' 217.35 feet;


6. 78° 15' 30" 10.65 feet Lot A-3, being portions of R.P. 6855, L.C.Aw. 9971, Ap. 9 to William Pitt Leleiohoku and all of Grant S-15098 to Lanikai Corporation, et.al. to the point of beginning and containing an area of 0.162 Acre.



73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
July 17, 2007

R. M. TOWILL CORPORATION

Description prepared by:


Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10,059
Expiration Date: April 30, 2008

- 4 -

420 Waiakamilo Road
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Fax 808 842 1937
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R. M. TOWILL CORPORATION
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LOT A-1-D

(Cultural Preservation Purposes)

BEING PORTIONS OF ROYAL PATENT 7587, LAND COMMISSION AWARD 11216,
APANA 36 TO M. KEKAUONOHI (CERTIFICATE OF BOUNDARIES NUMBER 138) AND
GRANT S-15096 TO LANIHAU CORPORATION, ET. AL.

AT HONOKOHAU 1ST, NORTH KONA, ISLAND OF HAWAII, HAWAII

Beginning at the northeast corner of this parcel of land, same being also the southeast corner of Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al., the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System, Zone 1 being 308,229.23 feet North and 322,499.20 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 345° 58' 50" | 94.63 | feet along Lot A-1-E (Road and Utility Purposes), being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 2. | 79° 36' | 595.49 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 3. | 74° 19' | 309.00 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 4. | 73° 50' | 144.00 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 5. | 73° 13' | 408.00 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |

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EXHIBIT A

Page 16

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- | | | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6. | 11° 56' | 139.00 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 7. | 56° 48' | 340.00 | feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 8. | Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to right with a radius of 5,904.00 feet, the chord azimuth and distance being: | | |
| | 154° 23' | 298.80 feet; | |
| 9. | 252° 51' | 823.00 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 10. | 183° 32' | 54.00 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 11. | 249° 22' | 89.00 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 12. | 291° 22' | 60.00 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 13. | 253° 20' | 334.00 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.; |
| 14. | 261° 04' | 589.92 | feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al. to the point of beginning and containing an area of 5.600 Acres; and |

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RESERVING, HOWEVER, the following easement:

EASEMENT L-4
FOR "NO VEHICULAR ACCESS" PLANTING SCREEN PURPOSES
BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NUMBER 138)

Beginning at the north corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 307,735.65 feet North and 320,667.59 feet East and thence running by azimuths measured clockwise from true South:

1. 252° 51' 10.08 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
2. Thence on a curve to the left with a radius of 5,894.00 feet, the chord azimuth and distance being:

334° 22' 57.5" 295.98 feet;
3. 56° 48' 10.06 feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
4. Thence along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being:

154° 23' 298.80 feet to the point of
beginning and containing an
area of 0.068 Acre.

-3-

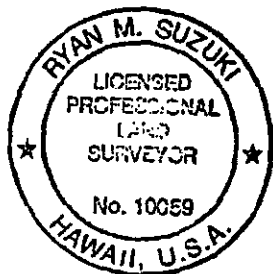
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73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
July 17, 2007



R. M. TOWILL CORPORATION

Description prepared by:

Ryan M. Suzuki
Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10,059
Expiration Date: April 30, 2008

- 4 -

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EXHIBIT A
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- | | | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------|
| 5. | 350° 49' 55" | 42.05 | feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 6. | 348° 03' 18" | 9.00 | feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 7. | Thence along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: | | |
| | | 33° 32' 28.5" | 42.07 feet; |
| 8. | 349° 01' 39" | 162.14 | feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 9. | Thence along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 970.00 feet, the chord azimuth and distance being: | | |
| | | 337° 54' 47" | 373.97 feet; |
| 10. | 326° 47' 55" | 530.13 | feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 11. | Thence along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 1,030.00 feet, the chord azimuth and distance being: | | |
| | | 336° 23' 22.5" | 343.22 feet; |
| 12. | 345° 58' 50" | 830.70 | feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |

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EXHIBIT A

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13. Thence along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 970.00 feet, the chord azimuth and distance being:
- 342° 34' 45" 115.10 feet;
14. 339° 10' 40" 362.33 feet along Lot A-1-A, being a portion of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);
15. 78° 15' 10" 60.76 feet along Kamanu Street (Road G), being a portion of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku;
16. 159° 10' 40" 352.74 feet along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
17. Thence along Lot A-1-C, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al, on a curve to the right with a radius of 1,030.00 feet, the chord azimuth and distance being:
- 162° 34' 45" 122.22 feet;
18. 165° 58' 50" 830.70 along Lots A-1-C, A-1-D and A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
19. Thence along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al, on a curve to the left with a radius of 970.00 feet, the chord azimuth and distance being:
- 156° 23' 22.5" 323.23 feet;
20. 146° 47' 55" 530.13 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;

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21. Thence along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al., on a curve to the right with a radius of 1,030.00 feet, the chord azimuth and distance being:
157° 54' 47" 397.11 feet;
22. 169° 01' 39" 160.11 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
23. Thence along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al., on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
123° 32' 28.5" 42.79 feet;
24. 168° 03' 18" 9.00 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
25. 170° 49' 55" 42.05 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
26. 168° 03' 18" 9.00 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al.;
27. Thence along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al., on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
213° 32' 28.5" 42.07 feet;

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R. M. TOWILL CORPORATION

SINCE 1930

EXHIBIT A
Page 23

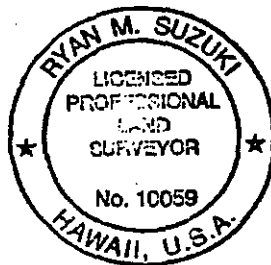
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28. 169° 01' 39" 573.18 feet along Lot A-1-B, being portions of R.P. 7587, L.C.Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant S-15096 to Lanihau Corporation, et.al. to the point of beginning and containing an area of 4.802 Acres; and

SUBJECT, HOWEVER, to the following:

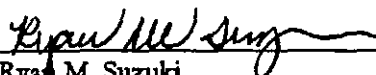
EASEMENT R-1 (Access and Utility Purposes) in favor of Lot A-2 as shown on map prepared by Russell Figueroa, Subdivision Number 7874 approved on October 20, 2004.

73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
August 3, 2007



R. M. TOWILL CORPORATION

Description prepared by:


Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10,059
Expiration Date: April 30, 2008

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TMK (3) 7-4-8-74

LOT A-2

BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NO. 138)

AT HONOKOHAU 1ST, NORTH KONA, ISLAND OF HAWAII, HAWAII

Beginning at the northwest corner of this parcel of land, being along the North boundary of Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,523.35 feet North and 322,353.41 feet East and thence running by azimuths measured clockwise from true South:

| | | | |
|----|--------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 259° 01' 40" | 322.18 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 2. | 260° 55' 29" | 820.00 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 3. | 332° 40' 40" | 345.76 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |
| 4. | 30° 55' 30" | 645.08 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |
| 5. | 350° 55' 30" | 265.00 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |

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6. Thence along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:

70° 33' 58.4" 35.45 feet;

7. Thence along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:

64° 08' 46.9" 25.98 feet;

8. 80° 55' 30" 525.68 feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al;

9. 169° 01' 40" 596.91 feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al to the point of beginning and containing an area of 12.706 Acres; and

TOGETHER, WITH, the following easement:

EASEMENT R-1

FOR ACCESS AND UTILITY PURPOSES

AFFECTING LOT A-1

BEING A PORTION OF ROYAL PATENT 7587,

LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI

(CERTIFICATE OF BOUNDARIES NO. 138) AND

GRANT S-15096 TO LANIHAI CORPORATION, ET. AL

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Beginning at the west corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 309,161.070 feet North and 320,229.00 feet East and thence running by azimuths measured clockwise from true South:

1. Thence on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being:
302° 59' 30" 35.36 feet;
2. 257° 59' 30" 316.19 feet;
3. Thence on a curve to the left with a radius of 420.00 feet, the chord azimuth and distance being:
240° 17' 05" 255.48 feet;
4. 222° 34' 40" 166.67 feet;
5. Thence on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being:
231° 24' 40" 162.77 feet;
6. 240° 14' 40" 465.54 feet;
7. Thence on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being:
253° 33' 40" 244.15 feet;
8. 266° 52' 40" 311.17 feet;
9. Thence on a curve to the left with a radius of 2,970.00 feet, the chord azimuth and distance being:
263° 54' 05" 308.43 feet;
10. 260° 55' 30" 709.45 feet along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);

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11. Thence along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
244° 08' 46.9" 25.98 feet;
12. Thence along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:
305° 55' 30" 88.21 feet;
13. Thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
7° 42' 13.2" 25.98 feet;
14. 350° 55' 30" 319.03 feet;
15. 80° 55' 30" 60.00 feet;
16. 170° 55' 30" 293.78 feet;
17. Thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
125° 55' 30" 63.64 feet;
18. 80° 55' 30" 684.20 feet;
19. Thence on a curve to the right with a radius of 3,030.00 feet, the chord azimuth and distance being:
83° 54' 05" 314.66 feet;
20. 86° 52' 40" 311.17 feet;
21. Thence on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being:
73° 33' 40" 216.51 feet;
22. 60° 14' 40" 465.54 feet;

- 4 -

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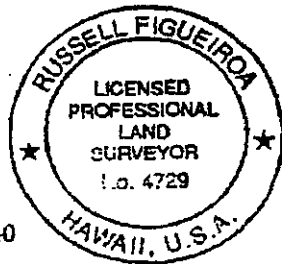


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23. Thence on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being:
51° 24' 40" 144.35 feet;
24. 42° 34' 40" 166.67 feet;
25. Thence on a curve to the right with a radius of 480.00 feet, the chord azimuth and distance being:
60° 17' 05" 291.98 feet;
26. 77° 59' 30" 316.19 feet;
27. Thence on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being:
32° 59' 30" 35.36 feet;
28. 167° 59' 30" 110.00 feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352) to the point of beginning and containing an area of 4.717 Acres; and

73-5574 Maiau Street
Kailua-Kona, Hawaii 96740
May 14, 2004



R. M. TOWILL CORPORATION

Description prepared by:

A handwritten signature in black ink, appearing to read "Russell Figueiroa", written over a horizontal line.

Russell Figueiroa
Licensed Professional Land Surveyor
Certificate Number 4729

- 5 -

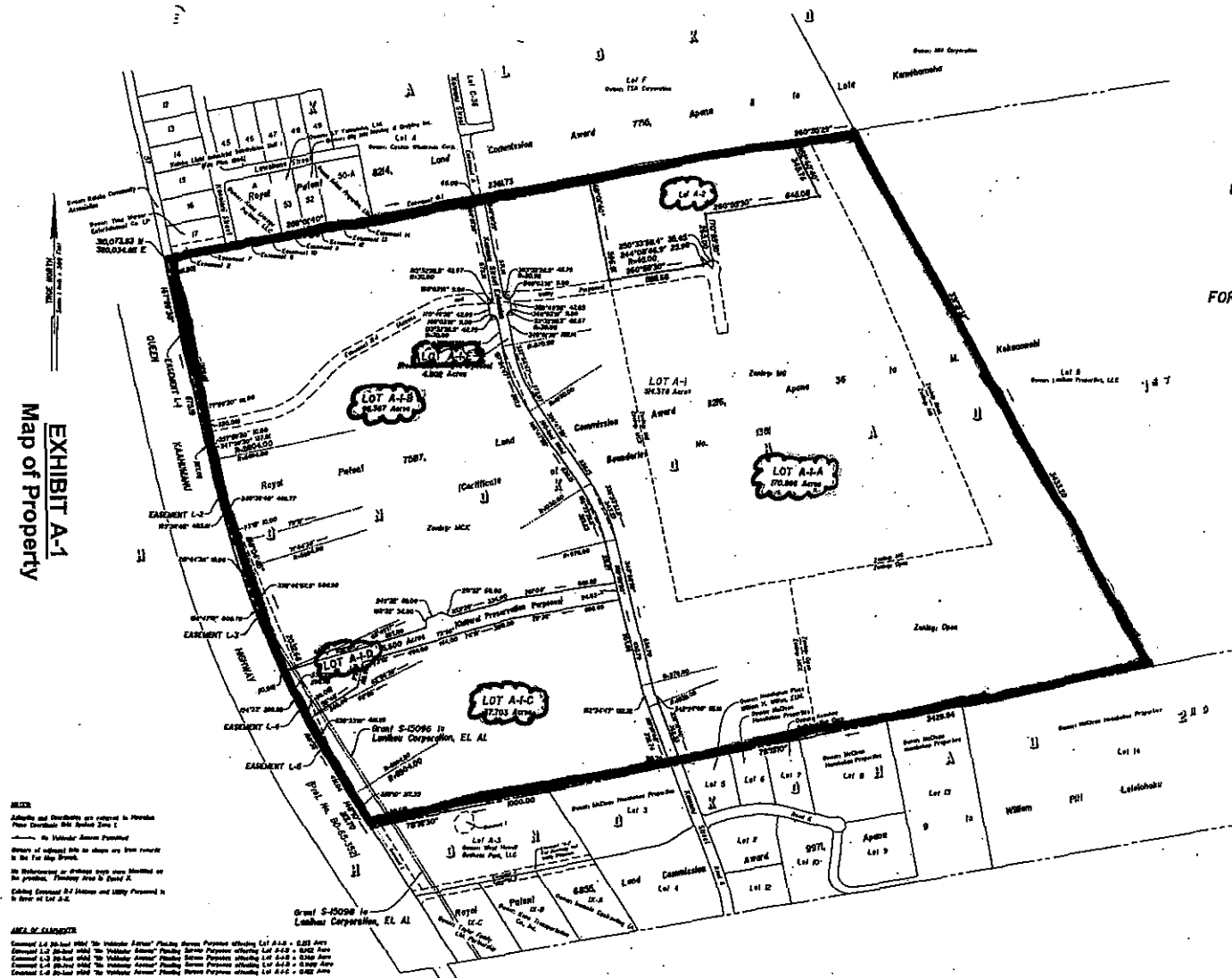
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EXHIBIT A-1
Map of Property



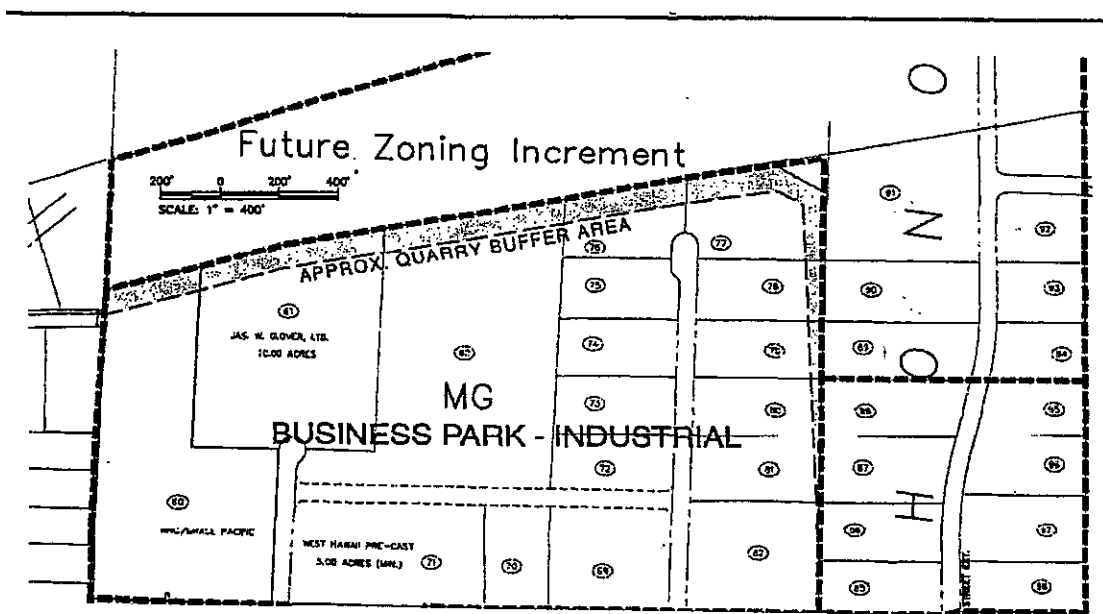
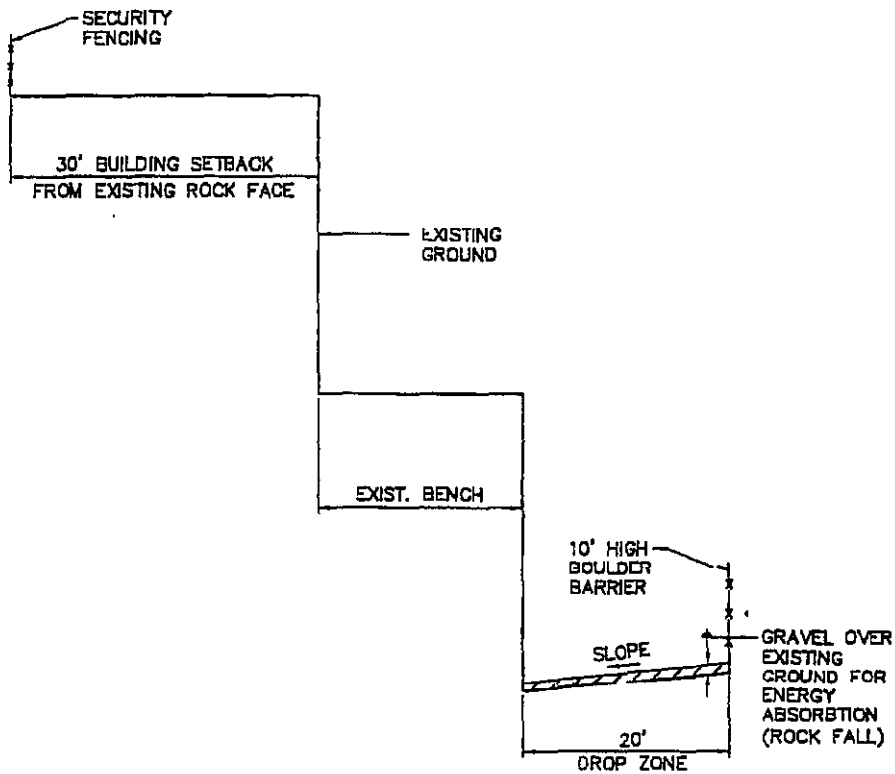


Figure 2.2 Lot Layout

NOTES:

1. REMOVE ALL LOOSE MATERIALS, PRECARIOUS OVERHANGS, AND ANY MATERIALS LOOSENEED BY THE GROOMING OF THE EXISTING ROCK FACE.
2. WHERE DEFECTS IN THE ROCK OR UNSTABLE CLINKER POCKETS ARE FOUND DURING THE GROOMING, PROVIDE SHOTCRETE TO SEAL THE UNSTABLE CLINKER LAYERS.



QUARRY WALL SECTION
ALTERNATE 2

SCALE: 1" = 20'

EXHIBIT A-3
Drawing of Quarry Wall
Section Alternate 2

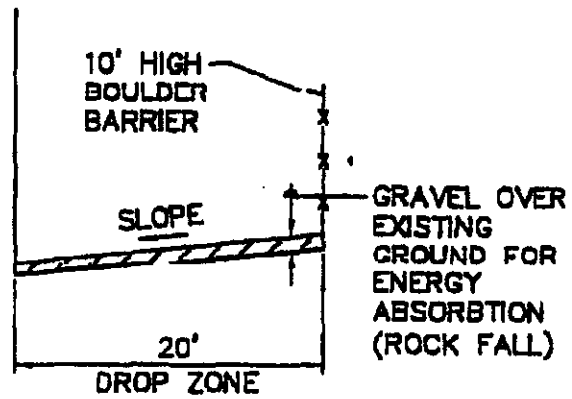


EXHIBIT A-4
Drawing of Boulder
Property

TMK (3) 7-4-8-74

LOT A-2

BEING A PORTION OF ROYAL PATENT 7587,
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI
(CERTIFICATE OF BOUNDARIES NO. 138)

AT HONOKOHAU 1ST, NORTH KONA, ISLAND OF HAWAII, HAWAII

Beginning at the northwest corner of this parcel of land, being along the North boundary of Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,523.35 feet North and 322,353.41 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 259° 01' 40" | 322.18 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lona Kamehameha; |
| 2. | 260° 55' 29" | 820.00 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lona Kamehameha; |
| 3. | 332° 40' 40" | 345.76 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |
| 4. | 80° 55' 30" | 645.08 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |
| 5. | 350° 55' 30" | 265.00 | feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al; |

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6. Thence along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:

70° 33' 58.4" 35.45 feet;

7. Thence along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al, on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:

64° 08' 46.9" 25.98 feet;

8. 80° 55' 30" 525.68 feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al;

9. 169° 01' 40" 596.91 feet along Lot A-1, being portions of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138) and Grant 15096 to Lanihau Corporation, et.al to the point of beginning and containing an area of 12.706 Acres; and

TOGETHER, WITH, the following easement

EASEMENT R-1

FOR ACCESS AND UTILITY PURPOSES

AFFECTING LOT A-1

BEING A PORTION OF ROYAL PATENT 7587,

LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI

(CERTIFICATE OF BOUNDARIES NO. 138) AND

GRANT S-15096 TO LANIHAI CORPORATION, ET. AL.

-2-

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Beginning at the west corner of this easement and along the east side of Queen Kaahumanu Highway (Project Number BD-65-352), the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 309,161.070 feet North and 320,229.00 feet East and thence running by azimuths measured clockwise from true South:

1. Thence on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being:
302° 59' 30" 35.36 feet;
2. 257° 59' 30" 316.19 feet;
3. Thence on a curve to the left with a radius of 420.00 feet, the chord azimuth and distance being:
240° 17' 05" 255.48 feet;
4. 222° 34' 40" 166.67 feet;
5. Thence on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being:
231° 24' 40" 162.77 feet;
6. 240° 14' 40" 465.54 feet;
7. Thence on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being:
253° 33' 40" 244.15 feet;
8. 266° 52' 40" 311.17 feet;
9. Thence on a curve to the left with a radius of 2,970.00 feet, the chord azimuth and distance being:
263° 54' 05" 308.43 feet;
10. 260° 55' 30" 709.45 feet along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138);

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11. Thence along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
244° 08' 46.9" 25.98 feet;
12. Thence along Lot A-2, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138), on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:
305° 55' 30" 88.21 feet;
13. Thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
7° 42' 13.2" 25.98 feet;
14. 350° 55' 30" 319.03 feet;
15. 80° 55' 30" 60.00 feet;
16. 170° 55' 30" 293.78 feet;
17. Thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:
125° 55' 30" 63.64 feet;
18. 80° 55' 30" 684.20 feet;
19. Thence on a curve to the right with a radius of 3,030.00 feet, the chord azimuth and distance being:
83° 54' 05" 314.66 feet;
20. 86° 52' 40" 311.17 feet;
21. Thence on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being:
73° 33' 40" 216.51 feet;
22. 60° 14' 40" 465.54 feet;

- 4 -

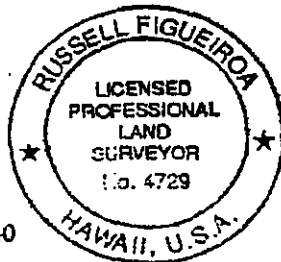
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23. Thence on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being:
51° 24' 40" 144.35 feet;
24. 42° 34' 40" 166.67 feet;
25. Thence on a curve to the right with a radius of 480.00 feet, the chord azimuth and distance being:
60° 17' 05" 291.98 feet;
26. 77° 59' 30" 316.19 feet;
27. Thence on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being:
32° 59' 30" 35.36 feet;
28. 167° 59' 30" 110.00 feet along the east side of Queen Kaahumanu Highway (Project Number BD-65-352) to the point of beginning and containing an area of 4.717 Acres; and



R. M. TOWILL CORPORATION

Description prepared by:

A handwritten signature in black ink, appearing to read "Russell Figueiroa", written over a horizontal line.

Russell Figueiroa
Licensed Professional Land Surveyor
Certificate Number 4729

73-5574 Maiiau Street
Kailua-Kona, Hawaii 96740
May 14, 2004

-5-

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EXHIBIT "C"

FORMULATION FOR ASSESSMENTS AND VOTING RIGHTS

I. Assessments. Assessments shall be levied on all Units subject to such assessment based on the number of square feet of land comprising the Unit. Each Unit is assigned one point for each 1,000 square feet of land (rounded to the nearest 1,000 square feet) comprising the Unit. The percentage of assessments to be levied on a particular Unit shall be computed by dividing the total points for such Unit by the total points for all Units subject to such assessment.

II. Votes. Votes for each Unit shall be computed using the same formula as set forth above for assessments, such that each Unit is assigned one vote for each 1,000 square feet of land (rounded to the nearest 1,000 square feet) comprising the Unit.

III. Cutoff Date for Computation. The point totals and votes for all Units and all Units in a subclass and the percentage of expenses to be levied on the Units subject to assessment shall be computed annually by the Association as of a date which is not less than 30 Days prior to the beginning of each fiscal year. Notice of the percentage for each Unit shall be sent with the annual notice of assessment.

IV. Example. For example, a Unit containing 20,408 square feet would be allocated 20 points and votes. If the total square footage of all Units subject to assessment equaled 460,000 square feet, the total points for all Units would 460 points. If the total square footage of all Units in the same subclass as the sample Unit equaled 260,000 square feet, the total points for all such Units in that subclass would 260 points. The sample Unit described above would be allocated 20 points and votes and 4.3% ($20 \div 460$) of the assessment budget. This example is for illustration purposes only and does not reflect the actual acreage of any particular Unit nor of the total actual acreage of all Units.

BY-LAWS

OF

WEST HAWAII BUSINESS PARK ASSOCIATION

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**BY-LAWS
OF
WEST HAWAII BUSINESS PARK ASSOCIATION**

**Article 1
Name, Principal Office, Definitions**

1.1 **Name.** The name of the corporation is **West Hawaii Business Park Association** (the "Association").

1.2 **Principal Office.** The principal office of the Association shall be located in the State of Hawaii. The Association may have such other offices, either within or outside the State of Hawaii, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for West Hawaii Business Park filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

**Article 2
Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1 **Membership.** The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. Class "A" shall have two subclasses of membership, Class "A (General Industrial)" and Class "A (Industrial-Commercial)".

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Property or as convenient as is possible and practical.

2.3 **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 **Special Meetings.** The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 20% of the total Class "A" votes in the Association.

2.5 **Notice of Meetings.** Written notice stating the place, day and time of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 Days before the date of such meeting,

by or at the direction of the president or the secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Hawaii law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 **Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing 25% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.11 **Conduct of Meetings.** The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12 **Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by Members representing at least eighty percent (80%) of the weighted vote of the Members entitled to vote thereon. Such consent shall be signed within 90 Days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Hawaii. Such consent shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within 10 Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

Article 3

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be representatives of eligible Members. No representative shall be eligible to serve as a director if any assessment for the Unit represented by such representative is delinquent. A "representative" shall be any officer, director, partner, employee, member, manager or trustee of such Member (unless otherwise specified by written notice to the Association signed by such Member), or any Person designated from time to time in a written notice to the Secretary of the Association signed by such Member, or any such Member who is a natural person; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 **Number of Directors.** The Board shall consist of three to seven directors, at least one of whom shall be a resident of the State of Hawaii, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors.

3.3 **Directors During Class "B" Control Period.** Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion

and shall serve at the pleasure of the Class "B" Member until the first to occur of the following, which first occurrence shall mark the end of the Class "B" Control Period:

(a) when 100% of the total number of Units proposed by the Master Plan for the property described on Exhibit "A" have been conveyed to Persons other than the Declarant; or

(b) when, in its discretion, the Class "B" Member so determines.

3.4 **Nomination and Election of Directors.** Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Each Member may cast the entire vote assigned to its Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

3.5 **Election and Term of Office.**

(a) Within one (1) year after at least fifty percent (50%) of the Units have been conveyed to Owners other than Declarant, the Board shall increase to five directors, and the Association shall hold an election at which (i) the Class "A (General Industrial)" Members shall be entitled to elect one of the five directors who must be a representative of an Owner of a Unit within the General Industrial Property, and (ii) the Class "A (Industrial-Commercial)" Members shall be entitled to elect one of the five directors who must be a representative of an Owner of a Unit within the Industrial-Commercial Property. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A (General Industrial)" Members and the Class "A (Industrial-Commercial)" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years each or until the occurrence of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the occurrence of the event described in subsection (b), a successor shall be elected for a like term.

(b) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall increase to seven directors, and the Association shall hold an election at which (i) the Class "A (General Industrial)" Members shall be entitled to elect three of the seven directors each of whom must be a representative of an Owner of a Unit within the General Industrial Property, with the two directors receiving the largest number of votes being elected for a term of two years and one director being elected for a term of one year; and (ii) the Class "A (Industrial-Commercial)" Members shall be entitled to elect three of the seven directors each of whom must be a representative of an Owner of a Unit within the Industrial-Commercial Property, with the two directors receiving the largest number of votes being elected for a term of two years and one director being elected for a term of one year. The remaining director shall be elected by the Class "A" Members as a whole, for a term of one (1) year.

(c) Upon the expiration of the term of office of each director elected by the Class "A (General Industrial)" Members, a successor shall be elected by the Class "A (General Industrial)" Members to serve a term of two years. Upon the expiration of the term of office of each director

elected by the Class "A (Industrial-Commercial)" Members, a successor shall be elected by the Class "A (Industrial-Commercial)" Members to serve a term of two years. Upon the expiration of the term of office of each director elected by the Class "A" Members as a whole, a successor shall be elected by the Class "A" Members to serve a term of two years. The directors elected by the Class "A" Members as a whole or by any subclass thereof shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members or any subclass thereof may be removed, with or without cause, by the Class "A" Members or applicable subclass thereof holding two-thirds of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members or applicable subclass thereof entitled to vote for such director to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 Days delinquent (or is the representative of a Member who is delinquent for more than 30 Days) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board (in the case of any director elected by the Class "A" Members as a whole) or applicable subclass of the Board (in the case of any director elected by such subclass) shall appoint a successor from the same subclass (if applicable) to fill the vacancy until the next annual meeting, at which time the Class "A" Members or applicable subclass thereof shall elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members or subclass thereof, the Board (in the case of any director elected by the Class "A" Members as a whole) or applicable subclass of the Board (in the case of any director elected by such subclass) may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members or applicable subclass thereof shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meeting.

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 30 Days thereafter at such time and place as the Board shall determine.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one such meeting shall be held during each quarter.

3.9 **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the president or vice president or by any two directors.

3.10 **Notice.** Notice of the time and place of a regular meeting shall be communicated to directors not less than 4 Days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than 72 hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; or (iv) telegram, charges prepaid. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal delivery, telephone, telecopier or telegraph shall be deemed communicated when delivered, telephoned, telecopied or given to the telegraph company.

3.11 **Waiver of Notice.** The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 **Telephonic Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 **Quorum of Board of Directors.** At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14 **Compensation.** Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any

director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board of Directors, excluding the interested director.

3.15 **Conduct of Meetings.** The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.16 **Open Meetings.** Subject to the provisions of Section 3.17, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature.

3.17 **Action Without a Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. **Powers and Duties.**

3.18 **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law, including but not limited to the establishment of rules and regulations for the governance of the Property. The Board may do or cause to be done all acts and things as are not directed by the Governing Documents or Hawaii law to be done and exercised exclusively by the membership generally.

3.19 **Duties.** The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep and maintenance of the Area of Common Responsibility;
- (d) designating, hiring and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) subject to the applicable provisions of the Declaration, enforcing by legal means the provisions of the Declaration, all Supplemental Declarations, these By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs and/or the rules of the Association, bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records and financial statements of the Association, as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) maintaining a membership register reflecting in alphabetical order, the names, Unit addresses and mailing addresses of all Members; and

(p) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Hawaii law, the Articles of Incorporation or the Declaration.

3.20 Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant under the Governing

Documents, or interfere with development of or construction on any portion of the Property, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the secretary of the Association, which notice complies with Section 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents may make its concerns, thoughts and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 20 Days following the meeting at which such action was proposed or in the case of any action taken by written consent in lieu of a meeting, at any time within 20 Days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.21 Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board may delegate to one of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.22 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finders fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) an annual budget shall be prepared for the Association, to be approved by the Board;

(g) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly (such financial statements shall include a statement of cash receipts and disbursements, an income statement reflecting all income and expense activity for the preceding period on an accrual basis and may include such other reports as deemed necessary by the Board); and

(h) an annual financial report shall be made available to all Members within 6 months after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.23 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain the affirmative vote or written consent, or any combination thereof, of Members representing at least 50% of the total Class "A" votes (as weighted), and if such exists, the affirmative vote or written consent of the Class "B" Member if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.24 **Right to Contract.** The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a Majority of the total number of directors of the Association.

3.25 **Enforcement.**

(a) **Notice.** Prior to imposition of any sanction or fine requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation; (ii) the proposed sanction or fine to be imposed; (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within 10 Days of the notice; and (iv) a statement that the proposed sanction or fine shall be imposed as contained in the notice unless a request for a hearing is received within 10 Days of the notice. If a timely request is not received, the sanction or fine stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction or fine if the violation is cured within the 10-Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the 10-Day period constitutes a separate offense, and sanctions and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one year from the date of any notice hereunder, the Board or covenants committee may impose a sanction or fine without notice to the violator. The Board may adopt a schedule of sanctions and fines for violations of the Declaration, all Supplemental Declarations, these By-Laws, the Articles of Incorporation, the Pollution Prevention Plan, the Design Guidelines, the Archaeological Preservation Plan, the Burial Treatment Plan, the Solid Waste Management Plan, the Storm Water CC&Rs and/or the rules of the Association.

(b) **Hearing.** If a hearing is requested within the allotted 10-Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

3.26 **Appeal.** If a hearing is held before a covenants committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within 10 Days after the hearing date.

Article 4

Officers

4.1 **Officers.** The officers of the Association shall be a president, vice president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board, but shall be representatives of Members. The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable, such officers to have

such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of president and secretary.

4.2 **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to se until their successors are elected.

4.3 **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

Article 5 **Committees**

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.25 of these By-Laws.

Article 6
Miscellaneous

6.1 **Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Hawaii law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3 **Conflicts.** If there are conflicts between the provisions of Hawaii law, the Articles of Incorporation, the Declaration and these By-Laws, the provisions of Hawaii law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

6.4 **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing, at any reasonable time during normal business hours and for a purpose reasonably related to such Member's interest in a Unit: The Declaration, By-Laws, Articles of Incorporation, any amendments to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association so long as the number of copies is reasonable in the Association's sole and absolute discretion.

6.5 **Notices.** Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 **Amendment.**

(a) **By Class "B" Member.** Until termination of the Class "B" membership, the Class "B" Member may unilaterally amend these By-Laws.

(b) **By Members.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent of Members holding at least 67% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. If a meeting is called for the purpose of considering a proposed amendment hereunder, such meeting shall be called in accordance with Sections 2.4 and 2.5. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date.** Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of West Hawaii Business Park Association, a Hawaii nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors (or by unanimous written consent in lieu thereof) held on the ____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 20__.

Secretary [SEAL]