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STATE OF HAWAII
LAND COURT

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SEVENTH SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS

WHEREAS, KALUA KOI CORPORATION, a Hawaii corporation, hereinafter referred to as "Declarant", and KEPUEHI PARTNERSHIP, a Hawaii partnership, did execute a certain Declaration of Covenants and Restrictions dated October 1, 1976, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 784612 and noted on Transfer Certificate of Title No. 181,964, hereinafter referred to as the "West Molokai Protective Covenants", covering certain parcels of land situated at Kaluakoi and Ilohi, Island of Molokai, County of Maui, State of Hawaii, which together with future annexations is to be known as "West Molokai"; and

WHEREAS, Declarant has filed in said Office of the Assistant Registrar as Document No. 922290 a "Supplemental Declaration of Covenants and Restrictions (Lots 24 through 40 and 42 through 56, Map 8, Land Court Application No. 1683)"; and as Document No. 928497 a "Second Supplemental Declaration of Covenants and Restrictions (Lots 63 and 66, Map 9, Land Court Application No. 1683)"; and as Document No. 993562 a "Third Supplemental Declaration of Covenants and Restrictions (Lots 70 through 85, Map 11, Land Court Application No. 1683)"; and as Document No. 1019966 a "Fourth Supplemental Declaration of Covenants and Restrictions (Lot 68, Map 9, Land Court Application No. 1683)"; and as Document No. 1049448 a "Fifth Supplemental Declaration of Covenants and Restrictions (Lot 94, Map 15 and Lots 97 and 98, Map 16, Land Court Application No. 1683)"; and as Document No. 1067584 a "Sixth Supplemental Declaration of Covenants and Restrictions (Lot 13, Map 7, Land Court Application 1683)"; by which Supplemental Declarations

Declarant annexed certain lands owned by it in accordance with the West Molokai Protective Covenants; and

WHEREAS, Declarant is the fee owner of certain land situated at Kaluakoi and Iloii, Island of Molokai, County of Maui, State of Hawaii, which has been subdivided into 276 lots as shown on Map 19, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1683; and

WHEREAS, Declarant desires to make and record this Declaration annexing the Lots described in Exhibit "A" attached hereto and made a part hereof, to West Molokai as hereinafter set forth (such Lots being sometimes hereinafter collectively referred to as "Papohaku");

NOW, THEREFORE, pursuant to the provisions of Article II of the West Molokai Protective Covenants, Declarant does hereby declare that Papohaku shall be, and hereby is, annexed to West Molokai, and that Papohaku is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the West Molokai Protective Covenants, but with the following special provisions and restrictions applicable to Papohaku which are in addition to and not in derogation of any covenants and restrictions contained in the West Molokai Protective Covenants, except to the extent herein set forth:

1. Each lot comprising Papohaku (each such lot being hereinafter referred to as "Lot" or "Lots" and being identified in Exhibit "A" attached hereto) is hereby designated a Single-Family Residential/Agricultural Lot, as hereinafter defined. The term "Owner" as used in this Supplemental Declaration shall have the same meaning (with respect to Papohaku) as set forth in the West Molokai Protective Covenants.

2. "Single-Family Residential/Agricultural Lot" shall mean any lot zoned for agricultural use and intended to be used for single-family residential and agricultural purposes, and which shall be governed and restricted in the same manner and to the same extent as a "Single-Family Residential Lot" and an "Agricultural Lot" are governed and restricted under the West Molokai Protective Covenants, except as set forth herein. Each Lot may be used for any purpose and in any manner which either a Single-Family Residential Lot or an Agricultural Lot may be used under the West Molokai Protective Covenants, except as set forth herein.

3. Notwithstanding Section 3.01(a)(26) of Article III of the West Molokai Protective Covenants, no Lot shall be subdivided or caused to be subdivided within a period of ten (10) years from the date of this Supplemental Declaration. This prohibition against subdividing a Lot shall not apply, however, to any Lot owned wholly or in part by Declarant. Upon the expiration of such 10-year period, any Lot may be subdivided in such manner as Declarant shall approve in writing, which approval shall not be unreasonably withheld.

4. Each Lot shall be limited to the installation and use of not more than one (1) domestic water tap not to exceed three-fourths inch (3/4") in diameter size. All water shall be used primarily for reasonable domestic purposes, including watering of normal residential landscaping, and shall not be used for any irrigation of crops or raising of livestock on a commercial or other large-scale basis. Each Lot Owner shall pay, when due, all water charges.

against such Lot or Owner by Declarant or by any water company established to serve Papohaku or by any governmental agency or public utility to which any water system serving Papohaku may be dedicated. From and after the time Declarant has caused a public utility company to assume the obligation of providing water to Papohaku, Declarant's responsibility and liability to each Lot Owner for providing such water shall cease and terminate.

5. Except as may be otherwise expressly set forth in this Supplemental Declaration, no Lot may be used for any commercial purpose whatsoever.

6. In addition to the requirements and restrictions imposed under Section 3.02 of Article III of the West Molokai Protective Covenants, each residential home constructed, erected or placed on any lot, exclusive of the cost of any outbuildings, landscaping, fences, storage facilities or other accessory structures constructed, erected or placed on such lot, shall have a construction cost of not less than Sixty-five Thousand Dollars (\$65,000.00), adjusted by the United States City Average All Urban Consumers--All Items Index, and shall comprise a total floor area of not less than one-thousand two-hundred (1,200) square feet, when measured from the insides of the perimeter walls. The term "adjusted by the United States City Average All Urban Consumers--All Items Index" shall mean that stated dollar amount increased or decreased in the same proportion as the United States City Average All Urban Consumers--All Items Index figure most recently published by the U.S. Department of Labor, Bureau of Labor Statistics (or, if not so published, the most

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nearly comparable available index) is more than or less than said Index figure for December, 1981. Prior to commencing any construction, the Owner shall deposit with the West Molokai Design Committee (as described in the West Molokai Protective Covenants) a performance bond and labor and material payment bond each in the amount equal to 100% of the cost of such construction, in form and with surety satisfactory to the Design Committee and naming the Design Committee as an additional obligee, guaranteeing the full and faithful performance of the Owner's construction contract and the payment of all subcontractors, laborers and materialmen.

7. All outbuildings, storage facilities and other accessory structures constructed, erected or placed on any Lot shall be of sound and quality construction and aesthetically compatible with all other structures and improvements on such Lot, and shall comply with the provisions of Section 3.02 of Article III of the West Molokai Protective Covenants.

8. Notwithstanding anything to the contrary contained in this Supplemental Declaration and the West Molokai Protective Covenants, including particularly, but not limited to, Sections 3.01(a) and 3.03 of the West Molokai Protective Covenants, the following lot in Papohaku, in addition to the uses permitted by this Supplemental Declaration and the West Molokai Protective Covenants, shall be permitted to be used and engaged in and for the following manner and purposes:

Lot 370: To be used for the purposes described in Section 2 of Article VIII of that certain Papohaku Declaration of Covenants, Conditions and Restrictions, executed by the

Declarant and covering Papohaku, which Declaration is of even date herewith and filed concurrently herewith in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Except for the uses described above, and except as elsewhere provided in this Supplemental Declaration, such Lot shall in all other respects be held, sold, conveyed, encumbered, leased, occupied and improved by the limitations, restrictions, covenants and conditions set forth in this Supplemental Declaration.

9. Lots 167, 210, 225, 272, 280, 286, 287, 295, 345, 353, 366, 367, 372 and 376 of Papohaku are hereby designated as "flag lots". The construction and maintenance of any roadway or driveway on any flag lot shall be upon the following terms and conditions:

No portion of any such roadway or driveway shall be constructed or encroach upon the lands of any lot ("adjacent lot") adjacent to or having a common boundary with a flag lot; PROVIDED, HOWEVER, that the Owner of a flag lot and his heirs, personal representatives, successors and assigns (such Owner, his heirs, personal representatives, successors and assigns being hereinafter referred to as the "Licensee") shall have, and is hereby granted, a license to enter upon and cut, fill and change the topography of any lot located immediately adjacent to or having a common boundary with his lot in such reasonable manner and at such reasonable times as may be necessary to complete the construction of or properly maintain such roadway or driveway on the flag lot, without the payment of any compensation to the Owner of such adjacent lot (such Owner being hereinafter referred to as the "Licensor"). No cuts, fills or other changes in the topography

4

of any adjacent lot made by the Licensee shall extend beyond or encroach upon the boundary line of such adjacent lot by more than twenty (20) feet, and all such cuts, fills and other changes shall be limited to that necessary for the proper and reasonable construction and maintenance of such roadway or driveway, and shall not in any manner materially detract from or adversely affect the appearance or value of any such adjacent lot. Each entrance upon an adjacent lot shall be preceded by giving oral or written notice of such entrance to the Licensor. The construction and maintenance of any roadway or driveway shall be completed lien free and shall at all times proceed in a reasonable and expeditious manner and with due diligence, and shall not, without the prior written consent of the Licensor, result in the destruction, removal or alteration of any building or improvement located upon or landscaping of any adjacent lot. Except as otherwise provided above, the Licensee shall indemnify, defend and save harmless the Licensor from and against any claim, expense, suit or liability, including any liability for loss or damage to property, real or personal, and injury to or death of any person, arising out of the license hereby granted, except to the extent such claim, expense, suit, property damage or personal injury or death is caused in whole or in part by the Licensor.

10. Each Lot shall be and is hereby made subject to building setback lines as follows:

a. The following Lots shall each have a 150-foot setback line along the common boundary each such Lot has with Kalua Koi Road (Kalua Koi Road being comprised of roadway Lot 59 as shown on Map 9 filed with Land Court Application No.

1683, roadway Lot 27⁶ as shown on Map 18 filed with Land Court Application No. 1683 and roadway Lot 413 as shown on Map 19 filed with Land Court Application No. 1683): Lots 24, 129-134 (inclusive), 142, 164, 165, 167-186 (inclusive) and 207.

b. All other Lots which have a common boundary with Kalua Koi Road (as identified above) shall have a 100-foot setback line along such common boundary.

c. All Lots which have a common boundary with roadway Lot 417 as shown on Map 19 filed with Land Court Application No. 1683 shall have a 100-foot setback line along such common boundary.

d. All Lots which have a common boundary with any of the following roadway Lots (as such roadway Lots are shown on Map 19 filed with Land Court Application No. 1683) shall have a 75-foot setback line along such common boundary: roadway Lots 404-412 (inclusive), 414-416 (inclusive) and 418-420 (inclusive).

The areas between the roadway lots identified above and the setback lines identified above are herein called "Building Setback Areas". No Owner shall construct, erect or place any building, improvement or structure or stockpile any material above, on or across the surface of the Building Setback Area applicable to his Lot; PROVIDED, HOWEVER, that an Owner may, upon obtaining the prior approval of the West Molokai Design Committee, erect and maintain a fence within the Building Setback Area applicable to his Lot.

11. No overhead or above-ground utility lines of any description shall be installed or maintained, or caused to be installed or maintained, on any Lot.

12. The Owner of any Lot served by (i.e., any Lot adjacent to, bordered by or having a common boundary with) both a Main Roadway and an Interior Roadway shall connect the driveway serving his Lot only to the Interior Roadway and not the Main Roadway. As used herein, the term "Main Roadway" shall mean Kalua Koi Road (as identified in paragraph 10(a) above) and Lot 417 as shown on Map 19 filed in said Office of the Assistant Registrar with Land Court Application No. 1683, and the term "Interior Roadway" shall mean and include Lots 404-412 (inclusive), 414-416 (inclusive) and 418-420 (inclusive), as such Lots are shown on said Map 19.

13. Notwithstanding anything to the contrary contained in the West Molokai Design Committee Rules, any Owner who is required to elevate the existing grade of his Lot in order to satisfy any applicable state, county or federal flood zone requirement, will be permitted to construct a dwelling upon such Lot with a height not to exceed two (2) stories or thirty (30) feet, whichever is less, as such height is measured from the minimum grade elevation imposed under such state, county or federal flood zone requirement, to the highest point of such dwelling. The construction of such dwelling shall in all other respects conform with the West Molokai Protective Covenants, this Supplemental Declaration and the West Molokai Design Committee Rules.

14. No on-street parking shall be permitted within Papohaku or on any Main Roadway or Interior Roadway (as such Roadways are identified in paragraph 12 above). It shall be the obligation of each Owner to ensure that the Owner, his family, guests, tenants, agents and invitees observe this prohibition, and any Owner failing to perform this obligation

shall be subject to a fine by the Board of Directors of the West Molokai Association for each such failure. Such fine(s) shall be in such amount as shall be determined from time to time by the Board. In addition, the Board may have any vehicle violating this prohibition towed away without any liability to the owner of such vehicle, in which event all towing charges shall be the responsibility of and assessed against the Owner of the Lot who has failed to perform the obligations imposed hereunder. The West Molokai Association shall have the same rights of enforcement and collection (including the right to lien the Owner's Lot) with respect to all fines and charges assessed under this paragraph as it does with respect to the enforcement and collection of any other assessment described in Article VI of the West Molokai Protective Covenants.

15. All garages shall be constructed and situated so that the vehicular entrance of the garage does not face directly any Main Roadway or Interior Roadway (as such Roadways are identified in paragraph 12 above). In addition, each Owner shall construct the driveway serving his Lot with sufficient paved vehicle turn-around space so as to eliminate the necessity of backing any vehicle onto any Main Roadway or Interior Roadway (as such Roadways are identified in paragraph 12 above) in order for that vehicle to leave the Lot.

16. The restrictions, covenants and conditions set forth in this Supplemental Declaration (and the West Molokai Protective Covenants) shall not apply to any Lot (including any lot hereafter created by subdividing any of the Lots described in Exhibit "A" attached hereto) during, and only during, such period of time as the Owner of such Lot (as defined in the West

Molokai Protective Covenants) is the County of Maui, but shall automatically apply to any other person or entity owning such Lot, whether or not such person or entity is an Owner of such Lot before or after the County of Maui's ownership of such Lot.

17. An Owner of a Single-Family Residential Agricultural Lot (other than Declarant) shall have one (1) vote in the West Molokai Association for each Lot so owned and shall have all the voting rights of a Class A member as set forth in Section 5.03 of Article V of the West Molokai Restrictive Covenants and the By-laws of West Molokai Association. Declarant shall have all the voting rights of a Class B member as set forth in said Section 5.03 for each Lot which it owns in Papohaku.

18. The Declarant does hereby forever reserve unto itself, its successors and assigns, and as an appurtenance to Lot 96 as shown on Map 16 filed with Land Court Application No. 1683 and described in Transfer Certificate of Title No. 230,004, all of the surface and subsurface waters and surface and subsurface water rights, including without limitation, basal, subterranean and artesian, over, across and under Papohaku, together with all rights, easements, privileges and appurtenances thereto, and together with the irrevocable right and license to enter upon and a perpetual easement to use and enter Papohaku for the purposes of:

(a) Testing, surveying, staking, drilling and boring for, and excavating and equipping, one or more wells on any Lot comprising Papohaku, and other facilities for the production, collection, pumping, removal, accumulation, impounding, conservation, taking and distribution of water.

(b) Constructing, installing, operating and maintaining upon any Lot comprising Papohaku, pumps, engines, motors, tanks, reservoirs, power systems, filtration and water

treatment equipment and associated pipes, conduits, wiring, controls, gauges, meters, pump houses and all other improvements, structures, buildings, machinery, appliances, equipment and things necessary to the collection, impounding, storage, pumping, treatment and transmission of water.

(c) Installing, operating, maintaining and replacing on any Lot comprising Papohaku, facilities, pipelines, waterlines, wires, poles, and other equipment for the transmission of water, gas, electricity, telephone and all other utilities necessary or incidental to the aforesaid purposes, together with the right to dedicate or assign the same to governmental agencies or public utility companies.

(d) Ingress and egress to and from each site, for the activities described above, and the nearest government highway.

The activities described in subparagraphs (a) through (d) above shall be conducted in such manner as not to unreasonably interfere with the Owners' use of Papohaku, and may be conducted by Declarant notwithstanding any prohibition to the contrary contained in the West Molokai Protective Covenants. The reservations, rights, easements, privileges, appurtenances and licenses mentioned herein are appurtenant to said Lot 96 and may be assigned, transferred or conveyed, in whole or in part by Declarant without the consent or joinder of any person owning any interest in Papohaku and without any amendment to this Supplemental Declaration. Each Owner shall execute such further instrument (including any grant of easement) as may be reasonably requested by Declarant for purposes of exercising and implementing any of the rights, easements, privileges and licenses herein granted or reserved to Declarant and said Lot 96.

19. The provisions of this Supplemental Declaration shall

be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision hereof. No right or remedy herein reserved is intended to be exclusive of any other right or remedy. The use of any gender includes all genders and the singular shall include the plural, and vice-versa, as the context so requires. This Supplemental Declaration shall continue and remain in full force and effect until such time as the West Molokai Protective Covenants is terminated under Section 8.01 of Article VIII of said Covenants.

IN WITNESS WHEREOF, Declarant has executed these presents this 10th day of December, 1981.

KALUA KOI CORPORATION

By Phillip Boyd
ITS Vice President

By Julie Hugo Simon
ITS Assistant Secretary

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU)

SS:

On this 10th day of December, 1981, before me appeared Phillip E. Boydston and Julie Hugo Simmons, to me personally known, who, being by me duly sworn, did say that they are Vice President and Assistant Secretary, respectively, of KALUA KOI CORPORATION, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of such corporation and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors; and said Phillip E. Boydston and Julie Hugo Simmons acknowledged such instrument to be the free act and deed of such corporation.

Julie Ann O'Rourke
Notary Public, State of Hawaii.

My commission expires: 8/5/84

lots 129 to 401, inclusive, and lot 403, as shown on map 19 filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1683, being portions of the land and premises described in and covered by Transfer Certificate of Title No. 236,978 issued to Kaiua Koi Corporation.

EXHIBIT "A"