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DOCUMENT NO. 1096895

PAPOHAKU DATE DEC 11 1981 TIME 3:21  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

This Declaration made this 10th day of December  
1981, by KALUA KOI CORPORATION, a Hawaii corporation (the  
"Declarant"), whose principal place of business and post office  
address is 745 Fort Street, Suite 901, Honolulu, Hawaii 96813.

WITNESSETH THAT :

WHEREAS, the Declarant is the owner of that certain  
land (the "Property") situate at Kaluakoi and Ioli, Island  
of Molokai, County of Maui, State of Hawaii, described in  
Exhibit "A" attached hereto and made a part hereof, and

WHEREAS, the Declarant has submitted the Property  
together with other land to that 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, as amended by that  
certain Seventh Supplemental Declaration of Covenants and  
Restrictions of even date herewith, filed concurrently herewith  
in said Office of the Assistant Registrar (said Declaration of  
Covenants and Restrictions, as so amended, being hereinafter  
called the "West Molokai Protective Covenants"), and

WHEREAS, the Declarant desires to enhance and protect  
the value, desirability and attractiveness of the Property, and  
provide for the maintenance and improvement of certain Common  
Property (as hereinafter defined) for the use and benefit of  
the owners and occupants of the Property, and

WHEREAS, the Papohaku Homeowners' Association, a  
Hawaii nonprofit corporation (the "Association"), has been  
organized to maintain and preserve the value, desirability and  
attractiveness of the Property and to supervise and enforce the  
compliance by the owners and occupants of the Property with all  
applicable protective provisions and owners' covenants;

NOW, THEREFORE, the Declarant, for the mutual  
benefit and protection of all owners and occupants of the  
Property, or any portion thereof, hereby declares that the  
Property, together with such other land as may hereafter  
be annexed thereto as provided herein, shall hereafter be  
held, leased, mortgaged, conveyed, used, occupied and im-  
proved subject to and with the benefit and protection of  
the limitations, covenants, conditions and the restrictions set  
forth in this Declaration, all of which are established and  
declared and agreed to be for the purpose of enhancing and  
protecting the value, desirability and attractiveness of the  
Property, and all of which shall run with the Property and  
inure to the benefit of and be binding on all parties having or  
who acquire any right, title or interest in the Property or any  
part thereof, their heirs, personal representatives, successors  
and assigns.

## ARTICLE I

### DEFINITIONS

Section 1. "Annexation" shall mean and refer to the process by which the Declarant may annex to the Property all, or any part, of the land owned or leased by the Declarant on the Island of Molokai, State of Hawaii, at the time of such annexation.

Section 2. "Association" shall mean and refer to the Papohaku Homeowners' Association, a Hawaii nonprofit corporation, its successors and assigns.

Section 3. "Association Rules" shall mean and refer to the rules and regulations promulgated by the Association pursuant to Article VI of this Declaration.

Section 4. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association.

Section 6. "Charter" shall mean and refer to the Charter of Incorporation of the Association.

Section 7. "Common Property" shall mean and refer to all real property, both land and improvements, in which the Association owns an interest for the common use and enjoyment of all Owners, and shall also include any personal property if such personal property is designated as "Common Property". Such interest may include, without limitation, estates in fee, estates for a term of years, licenses and easements. The property described in any Exhibit "B" attached to this Declaration is hereby designated as Common Property.

Section 8. "Declarant" shall mean and refer to Kalua Koi Corporation, its successors and assigns.

Section 9. "Design Committee" shall mean and refer to the Design Committee referred to in Article IV of the West Molokai Protective Covenants.

Section 10. "Lot" shall mean and refer to any subdivided portion of the Property shown as such upon a subdivision map approved by the appropriate agencies of the County of Maui, and in each case, except when clearly contrary to the context, shall include all improvements thereon. Upon the subdivision of any lot, the term "lot" shall mean each lot created by such subdivision. Upon the consolidation of two or more lots, the term "lot" shall mean the land consisting of the lots so consolidated. The term "lot" shall also include a condominium unit unless the context clearly indicates a contrary intent.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, and shall include a purchaser or purchasers under an agreement of sale; provided, that to such extent and for such purposes, including voting, as shall be provided by a lease of any lot filed with the Board of Directors of the Association, the lessee of such lot shall be deemed to be the Owner thereof. Prior to the first conveyance of any lot by the Declarant, "Owner" shall mean the Declarant unless the Declarant has designated someone else to exercise the rights and bear the burdens of ownership.

Section 12. "West Molokai Protective Covenants" shall mean and refer to that certain Declaration of Covenants and Restrictions, dated October 1, 1976, executed by the Declarant and Kepuhi Partnership, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as the same may be now or hereafter amended or supplemented by any Supplemental Declaration of Covenants and Restrictions.

Section 13. "West Molokai Association" shall mean and refer to the West Molokai Association described in Article V of the West Molokai Protective Covenants, a Hawaii nonprofit corporation, its successors and assigns.

Section 14. "Property" shall mean and refer to all of the land described in Exhibit "A" attached hereto, together with such other land as may be hereafter annexed thereto as provided herein.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. Voting. Each member of the Association (including the Declarant) shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall share a single membership with respect to such Lot. The vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one vote be cast with respect to any Lot. Any co-owner of a Lot may cast the vote for such Lot unless the Association first receives written notice that the co-owners disagree as to how the vote should be cast, in which event the vote for such Lot shall not be counted unless the co-owners unanimously agree.

Section 3. Conveyance Documents and Mortgages. Every Owner shall promptly cause to be duly filed of record

the conveyance document to him of his Lot and shall file a certified copy of such conveyance document with the Board of Directors through the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by mortgage which has priority over the lien of any assessment provided herein shall notify the Board of Directors through the secretary of the Association of the name and address of the mortgagee and also of the release of such mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

### ARTICLE III

#### ANNEXATION

The Declarant may, from time to time and in its sole discretion, annex to the Property any real property owned or leased by it at the time of such annexation and situated on the Island of Molokai, whether or not such property is or is to be subject to the West Molokai Protective Covenants.

(a) The annexation of such property shall become effective when, and only when, the Declarant or the Association shall have recorded a supplemental declaration, which may consist of more than one document, and which shall, among other things (i) describe the real property to be annexed and such other limitations, restrictions, covenants and conditions applicable to such property as provided in paragraph (b) of this Article III, and (ii) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to this Declaration.

(b) Any provision herein to the contrary notwithstanding, the supplemental declaration referred to in paragraph (a) of this Article III may, with respect to all or any part of the property described in such declaration, provide for any or all of the following:

- (1) Such new land classifications or use restrictions not then provided for in this Declaration and such limitations, restrictions, covenants and conditions with respect to the use of the property annexed as Declarant may deem to be appropriate for the development of such property; and
- (2) With respect to the land classifications provided for in this Declaration, such additional or different limitations, restrictions, covenants and conditions with respect to the use of the property annexed as the Declarant may deem to be appropriate for the development of such property.

Upon the annexation of such property, this Declaration shall be deemed to include any and all additions and modifications authorized by subparagraphs (1) and (2) above and set forth or referred to in such supplemental declaration.

(c) Any supplemental declaration filed annexing any lot to the Property may be amended in any manner by the filing of a further supplemental declaration setting forth such amendment and signed by the Declarant and the Owner or Owners of such lot.

#### ARTICLE IV

##### COVENANT FOR ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation of Assessment. The Declarant, for each Lot it owns, hereby covenants and each Owner of any Lot by acceptance of the conveyance thereof, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges, (b) special assessments for capital improvements, and (c) special assessments on specific Lots, such assessments to be established and collected as hereinafter provided. The annual and special assessments together with interest at the rate of one per cent (1%) per month from ten (10) days after the due date of any installment thereof, a late payment fee payable to the Association with respect to any assessment installment not paid within ten (10) days after the due date in such amount as the Association shall fix from time to time and all other costs of collection (including all attorneys' fees incurred by the Association), shall be a charge and lien on the Lot against which each such assessment is made until fully paid and shall also be the personal obligation of the person or entity who is the Owner of such Lot at the time when the assessment falls due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid annual and special assessments together with interest, late payment fees and other costs of collection which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The grantor or grantee under any conveyance and any Owner or mortgagee of a Lot shall, upon payment of a reasonable fee to the Association to cover administrative costs, be entitled to a statement from the Association setting forth the amount of any unpaid annual and special assessments together with any interest, late payment fees and other costs of collection which may be a charge on the Lot and the Owner thereof, and neither such grantee or mortgagee shall be liable for, nor shall the Lot conveyed be subject to, a lien for any such annual or special assessment, interest, late payment fees and other costs of collection in excess of the amount therein set forth, except for such assessments, interest, late payment fees and other costs of collection as shall fall due after the date of

such statement. If more than one person owns a Lot or an interest therein, all such persons shall be jointly and severally liable for annual and special assessments, interest, late payment fees and other costs of collection which are a lien on such Lot. All annual and special assessments shall be prorated as of the date of conveyance of a Lot by the Declarant to the Owner of such Lot.

Section 2. Use of Assessments. The assessments levied by the Association shall be used exclusively for the improvement, maintenance, construction, replacement, repair of and additions to the Property or Common Property; for reserves for the foregoing, including, but not limited to, the payment of taxes and insurance (not including taxes and insurance on the Lots); for labor, equipment, materials, management and supervision thereof; and for any costs or expenses referred to herein as common expenses of the Association.

Section 3. Annual Assessments. Until the first day of the January which occurs at least ninety (90) days after the conveyance of the first Lot by the Declarant, the annual assessment shall be at the annual rate set by the Declarant. Thereafter, the annual assessment shall be determined by the Board of Directors, which shall fix the amount of the annual assessment against each Lot for the ensuing year and send written notice thereof to each Owner not less than fifteen (15) days in advance of the beginning of such annual assessment period. The Board of Directors may also from time to time during the year increase the annual assessment or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, PROVIDED that the Board of Directors shall send to all Owners written notice of any such increase or special assessment not less than fifteen (15) days before the effective date of such increase or assessment.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized in this Article IV, the Board of Directors may levy at any time a special assessment for the purpose of defraying, or funding a reserve to defray, in whole or in part, the cost of any construction, reconstruction or replacement of any capital improvements upon the Property or Common Property, including fixtures and personal property related thereto.

Section 5. Special Assessment on Specific Lot. In addition to the annual assessment and any special assessment for capital improvements, the Board of Directors may levy at any time special assessments on any Lot, the Owner or occupant of which shall have failed to comply with this Declaration, the Association Rules, the Charter or the Bylaws. Such special assessments shall be in such sum as the Board may determine in its sole discretion as appropriate or necessary to ensure the future compliance with this Declaration, the Association Rules, the Charter or the Bylaws, and such additional sum as may be necessary to compensate the Association, the Board or any other third-party for any damage or injury which may result from or be attributable to such Owner's failure to comply with

this Declaration, the Association Rules, the Charter or the Bylaws, and shall include all costs of collection (including all attorneys' fees) when incurred.

Section 6. Uniform Rate of Assessment. All assessments made under the provisions of Sections 3 and 4 of this Article shall be equally allocated among all Lots and shall be payable in quarterly installments or at such other times as the Board of Directors may designate. No amendment to this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

Section 7. Effect of Nonpayment of Assessments, Remedies of the Association. If any assessment, charge, interest or late payment fee is not paid when due, the Association may bring an action at law against the persons personally obligated to pay the same or foreclose the lien against the Lot or both. No Owner may waive or otherwise escape liability for the assessments provided herein by nonuse or abandonment of his Lot or the Common Property. All assessments shall be payable without offset for any reason whatsoever.

Section 8. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any purchase money mortgage or of any mortgage to a bank, savings and loan association, insurance company or other institutional lender on any Lot; and the holder of any such first mortgage or purchaser who comes into possession of a Lot by virtue of foreclosure of such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which becomes due prior to the time such holder or purchaser takes possession of such Lot, PROVIDED, that to the extent there are any proceeds of the sale on foreclosure of such mortgage in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due. No amendment to this Section shall affect the rights of the holder of any mortgage referred to above whose mortgage was recorded prior to the recordation of such amendment and who does not join in the execution thereof. By subordination agreement authorized by the Board of Directors, the benefits of this Section may be extended to mortgages and other security agreements not otherwise entitled thereto.

#### ARTICLE V

#### USE RESTRICTIONS; WEST MOLOKAI PROTECTIVE COVENANTS

In addition to the limitations, covenants, conditions and restrictions set forth in this Declaration, the use and operation of each Lot shall also be governed by the limitations, covenants, conditions and restrictions set forth in the West Molokai Protective Covenants. As provided for in

Article V of the West Molokai Protective Covenants, each Owner of a Lot shall also be a member of the West Molokai Association.

#### ARTICLE VI

##### POWERS AND AUTHORITY OF ASSOCIATION

The Association shall have all the powers set forth in the Charter and Bylaws, together with its general powers as a nonprofit corporation, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners. Without in any way limiting the generality of the foregoing, the Association shall have the following rights, privileges and powers:

(a) Binding Contracts. The Association shall have the right to enter into contracts binding upon all Owners, including, but not limited to, all contracts for sewer, sanitation, utility, recreational and other services and facilities, by whomsoever provided, upon such terms and conditions as may be approved by the Board of Directors, and shall have the right to assess against and collect from each Owner all sums due from the Owners or the Association under such contracts. Such sums may be assessed as a part of the annual assessments referred to in Section 3 of Article IV of this Declaration, and the Association shall have all the rights of collection and enforcement with respect thereto as provided in this Declaration for the collection and enforcement of all other assessments.

(b) Other Rights. The Association shall have, with respect to this Declaration, the Property, the Owners and any Common Property, the same rights, powers and privileges of the West Molokai Association described in Section 5.05 of Article V of the West Molokai Protective Covenants.

(c) Association Rules. (i) The Association may from time to time, subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules governing the use and enjoyment of the Property and Common Property and the personal conduct of the Owners, their tenants and guests. All such rules and regulations shall be adopted for the purposes of promoting the recreation, health, safety, comfort and welfare of the Owners, and enhancing the quality of life in Papohaku and the value of the Property and Common Property, and each Owner shall abide by the Association Rules, as the same may from time to time be amended, and shall see that the same are faithfully observed by the invitees, guests, employees and tenants of the Owner. The Association Rules may include provisions



relating to the charging of user fees for any Common Property or facilities or services owned or offered by the Association. Failure of any Owner or his invitees, guests, employees and tenants to comply with any of the Association Rules shall be treated in the same manner as a breach of this Declaration, and the Association shall have the benefit of all of the remedies provided herein for a breach of this Declaration.

(ii) A copy of the Association Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or any assistant secretary of the Association, shall be filed in and available at all times at the Office of the Association and duplicate copies thereof shall be delivered to each Owner on his acquisition of a Lot, and a copy of each new rule or of any amendment of an existing rule and notice of appeal of any rule shall be delivered to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Association Rules shall have the same force and effect as if they were set forth and were a part of this Declaration. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

(d) Common Property. (i) The Association shall accept title to or any other interest in any and all Common Property from time to time conveyed to it by the Declarant. The Association may also acquire and accept title to any other property, real, personal or mixed; however, nothing herein shall be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guests of any Common Property to help defray the costs of operating and maintaining the Common Property. The Association shall not have the right to in any manner dispute, repudiate or refuse to accept the conveyance of any Common Property conveyed by the Declarant to the Association, and once conveyed, the Association may not transfer, sell, convey, assign or in any other manner dispose of any interest in any such Common Property without first giving the Declarant the first right to acquire such interest. If such first right to acquire is exercised by the Declarant, such interest shall be conveyed to the Declarant for the same purchase price the Common Property was originally conveyed by the Declarant to the Association, free and clear of all liens and encumbrances except for those existing at the time the Common Property was conveyed by the Declarant to the Association; provided, however, that such purchase price shall be increased by the then fair market value of any improvements constructed or installed upon the Common Property by the Association, less any and all sums of money contributed by the Declarant (including the \$75,000 referred to in Article VIII, Section 2 below) for the construction or installation of such improvements.

(ii) The Association shall at all times maintain or provide for the maintenance and landscaping of the Common Property including, without limitation, recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on the Common Property, in an attractive and safe condition and in good order and repair.

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

(iv) The Association may contract for, employ or otherwise provide security, utility, refuse disposal and other services and maintain roads on or for the Property or the Common Property.

(v) The Association shall obtain and maintain with respect to any Common Property and improvements located thereon, the types of policies of insurance (and their respective coverages) described in Section 5.04 of Article V of the West Molokai Protective Covenants, naming the Board of Directors, the Declarant, and, where applicable, the Owners, as additional insureds. The Board of Directors may procure such other insurance insuring the Property, the Common Property, the Association, the Owners or others against such risks as the Board of Directors may deem advisable.

(vi) All costs and expenses incurred by the Association in maintaining and improving the Common Property and in performing all its obligations hereunder shall be deemed to be a common expense of the Association; provided, however, that the cost of any maintenance, repairs or replacements of or to the Common Property necessitated by the negligence, misuse or neglect of an identified Owner shall be charged to such Owner as a special assessment pursuant to Section 5 of Article IV hereof.

(e) Enforcement. The Association shall have the power to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid, or during which there exists a violation or breach of this Declaration or of the Association Rules with respect to such Lot or such Owner; and the Association may without liability to any Owner for trespass, damage or otherwise, enter upon any Lot or improvements thereon where or with respect to which there exists any violation or breach of this Declaration or of the Association Rules and summarily abate or remove such violation or breach at the Owners' expense, which shall be deemed a special assessment on the Lot within the meaning of Section 5 of Article IV hereof. The Association shall have the power and authority to enforce parking restrictions by having improperly parked vehicles towed away. The Association or any Owner shall have a right to enforce by any proceeding at law or in equity the Association Rules as well as

all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and to bring legal action to enjoin or abate or remedy any breach or violation of this Declaration or the Association Rules or to recover damages, or both. The party prevailing in any such legal action shall be entitled to recover from the other party thereto, as a part of the judgment, reasonable attorneys' fees and costs of suit. If the Association is the prevailing party in such action, the amount of such costs and attorneys' fees shall be deemed a special assessment on the specific Lot involved in the action, within the meaning of Section 5 of Article IV hereof. Failure of the Association or any Owner to enforce any covenant, restriction, rule or regulation shall not be deemed a waiver of the right to do so thereafter.

#### ARTICLE VII

##### RESERVATION OF ACCESS AND UTILITY EASEMENTS

Declarant reserves for itself and its successors and assigns, easements for public access (both pedestrian, vehicular and for parking purposes), electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities over, under, along, across and through the Property and any Common Property, together with the right to grant to the State of Hawaii, County of Maui, or any other appropriate governmental agency or to any public utility or other public or private corporation or association, profit or non-profit, easements for such purposes over, under, across, along and through the Property and the Common Property upon the usual terms and conditions, if any exist, required by the grantee thereof for such easement rights; PROVIDED, HOWEVER, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property or the Common Property by the Owners thereof. Each Owner of the Property or the Common Property, or any portion thereof, hereby appoints the Declarant as the Owner's attorney-in-fact to grant such easements and to do all other things necessary to effectuate such grants. This power-of-attorney is coupled with interest and is irrevocable.

#### ARTICLE VIII

##### MAINTENANCE AND IMPROVEMENT OF COMMON PROPERTY

Section 1. Declarant's Right to Improve Common Property. Until relinquished as hereinafter provided, or except as elsewhere provided in this Declaration, the Declarant shall have the right (but not the obligation) to at any time improve any Common Property with such buildings and recreational facilities, and to maintain the landscaping of the Common Property, in such manner and design as the Declarant shall determine in its sole discretion; provided, however, that if such improvements and maintenance are undertaken by the Declarant without the prior consent of the Board of Directors, such undertakings shall be at the sole cost and expense of the

Declarant; provided further, however, that the cost of any maintenance, repairs or replacements necessitated by the negligence, misuse or neglect of an identified Owner shall be charged to such Owner as a special assessment constituting a lien on such Owner's Lot within the meaning of Section 5 of Article IV hereof.

The Declarant, its employees, agents and contractors shall have, and each Owner of any Lot by acceptance of the conveyance thereof, is deemed to grant, a non-exclusive easement to enter upon any Common Property and any portion thereof, and to do all acts in such reasonable manner and at such reasonable times as may be necessary for the proper construction and installation of improvements upon and maintenance of the landscaping of the Common Property as provided herein, together with the right, in the form of an easement, to create and cause noise and other nuisances necessitated by and resulting from any work connected with or incidental to such construction and installation of improvements upon and maintenance of the landscaping.

Under no circumstances shall the Declarant or any of its employees, agents or contractors be liable to any Owner for any injury or damage to property or persons, including wrongful death, arising out of or in connection with the construction, installation, use and enjoyment of improvements upon and maintenance of any Common Property as provided herein, or the easements and rights granted hereby, or for any nuisance made or suffered on or from any Common Property, unless such injury, damage, death or nuisance arises out of or is occasioned by the negligence or willful misconduct of the Declarant or any of its employees, agents or contractors.

The Declarant may at any time by written notice to the Association, relinquish its right to further construct or install any improvements on any Common Property or maintain the landscaping of any Common Property, whereupon the Association shall, at its own cost and expense, be solely responsible for the construction or installation of any improvements upon the Common Property and for the maintenance of the landscaping of any Common Property, and thereupon the Declarant shall be completely relieved of any and all liability for any improvements theretofore constructed or installed upon any Common Property (including any liability for any latent or non-latent construction or design defects in the improvements) and for any maintenance of such improvements or the landscaping of any Common Property, it being the intent of this Declaration that all such liability shall be assumed entirely by the Association.

Section 2. Association's Right to Improve Certain Common Property. Notwithstanding anything to the contrary contained in Section 1 above, the Association shall, upon the affirmative vote of ten percent (10%) or more of the Owners at any meeting duly called and held, construct or cause to be constructed, upon the Common Property described in Exhibit "B" attached hereto (if any), or in the absence of such Exhibit

"B", such Common Property as may be hereafter conveyed by the Declarant to the Association and designated for the purposes described herein, at least the following recreational facilities for the use and enjoyment of all Owners: one (1) swimming pool not less than 40 feet by 15 feet in size, together with all necessary appurtenant equipment; one (1) regulation size tennis court; one (1) completely enclosed recreational/activity building containing not less than one (1) restroom, one (1) kitchenette (which shall be equipped with hot and cold running water, counters, cabinets and space for one (1) standard size refrigerator, oven and countertop range), and an additional 600 square feet of enclosed floor space. All such construction must proceed in compliance with the provisions of the West Molokai Protective Covenants, and pursuant to plans and specifications first approved by the Declarant in writing. Before undertaking the construction of such improvements, the Association shall obtain and furnish to the Declarant, a 100% performance bond and a 100% labor and material payment bond, naming the Association and the Declarant as co-obligees, in form and amount and with surety satisfactory to the Declarant, guaranteeing the full and faithful performance of the construction contract and completion of the work contemplated thereby, free and clear of all liens and encumbrances. The Declarant shall, upon written request of the Board of Directors, deposit the sum of \$75,000 into a special account to be applied to the construction of the recreational facilities described above; provided, however, that such sum of \$75,000 shall be reduced by any sums theretofore expended by the Declarant for the construction of such recreational facilities. The Declarant shall disburse such sums from such account as may be from time to time requested in writing by the Board for the purpose of constructing such recreational facilities. All sums in excess of such \$75,000 necessary for the construction, completion and maintenance of such recreational facilities shall be the financial obligation solely of the Association, and not the Declarant.

#### ARTICLE IX

#### INDEMNITY

Except as otherwise provided in this Declaration, the Association and all Owners and their family, tenants, guests, agents, employees and licensees shall indemnify and hold the Declarant harmless against all claims and demands for loss, damage or injury, including property damage, personal injury and wrongful death, arising out of or in connection with the use or ownership of the Property or any Common Property, or any portions thereof, or any provision of this Declaration, or the application of any provision of this Declaration to any Owner or his family, tenants, guests, agents, employees or licensees, or any rights, duties, privileges, easements or reservations created by or under this Declaration, and will jointly and severally reimburse the Declarant for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such claim or demands.

ARTICLE X

MISCELLANEOUS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 2. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in said Office of the Assistant Registrar, executed by any two (2) officers of the Association, certifying that at a meeting of the members of the Association duly called and held for the purpose, the Owners of at least seventy-five percent (75%) of the Lots voted in person or by proxy in favor of such termination. If any of the privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Ronald Reagan, President of the United States.

Section 3. No Waiver. Any failure by the Association, the Declarant, or any other party responsible for the enforcement of any of the limitations, covenants, conditions, restrictions, rules and regulations set forth in this Declaration, the West Molokai Protective Covenants, the Association Rules, the Charter or the Bylaws, to insist upon the strict performance by any Owner of any of such limitations, covenants, conditions, restrictions, rules and regulations, shall not be deemed to be a waiver of any such limitations, covenants, conditions, restrictions, rules and regulations, and the Association, the Declarant and such other parties shall have the right, notwithstanding any such failure, to thereafter insist upon the strict performance by any Owner of all of such limitations, covenants, conditions, restrictions, rules and regulations to be performed by such Owner. All remedies provided for in this Declaration are cumulative and non-exclusive. This Declaration, the Charter, the Bylaws and the Association Rules shall not be in derogation of, but shall be construed in accordance and together with, the West Molokai Protective Covenants and any rules (including any design committee rules) promulgated thereunder.

Section 4. Amendment. Except as otherwise provided herein, this Declaration may be amended by an instrument executed by any two officers of the Association and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, certifying that at a meeting of

the membership of the Association duly called and held for that purpose such amendment was duly adopted by the vote, in person or by proxy, of the Owners of at least seventy-five percent (75%) of the Lots.

Section 5. Interpretation. The headings of articles and sections herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Declaration. In this Declaration, whenever the context so requires, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include any other gender. The laws of the State of Hawaii shall govern the validity, construction and enforcement of this Declaration.

IN WITNESS WHEREOF, the Declarant has executed this instrument as of the day and year first above written.

KALUA KOI CORPORATION

By Phillip T. Boyd  
Its V. C. - Pres.

By John Hugo Pimmon  
Its Assistant Secretary

STATE OF HAWAII )

)

SS:

CITY AND COUNTY OF HONOLULU )

)

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.

  
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Notary Public, State of Hawaii

My commission expires: 8/5/84



EXHIBIT "A"

Lots 129 to 149, inclusive, Lots 151 to 369, inclusive, Lots 371 to 398 inclusive, Lot 400 and Lot 401, 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 Kalua Koi Corporation.