



VILLAGE PARK

Declaration of Protective Covenants

**Declaration of Protective Covenants
for Village Park Community**

**Dated March 13, 1979. Recorded
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State of Hawaii in Liber 13595,
Page 324.**

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Declaration of Protective Covenants for Village Park Community

This Declaration made this 13th day of March, 1979 by Waitec Development, Inc., a Nevada corporation, with principal place of business and post office address at 828 Fort Street, Suite 600, Honolulu, City and County of Honolulu, State of Hawaii, hereinafter referred to as the "DECLARANT,"

Witnesseth That:

Whereas, Declarant is the owner of certain leasehold property situated at Hoaeae and Waikele, Ewa, City and County of Honolulu, State of Hawaii, described in EXHIBIT "A" attached hereto and by reference made a part hereof, hereinafter referred to as the "Village Park Community or as Village Park."

Whereas, Declarant intends to develop said Village Park as a planned residential community which will include a variety of single family residential units and condominium residential apartment units. A commercial site, school site and two park sites are projected within the development.

Whereas, in order to insure the orderly and proper development and use of the Village Park Community in relation to the development and use of the premises as a whole and to promote a high type and quality of improvement and use of Village Park Community, Declarant desires to subject all of the premises to certain mutual covenants, conditions, limitation and restrictions herein set forth in this Declaration of Protective Covenants for Village Park Community hereinafter referred to as "Declaration" which will inure to the benefit of all present and future owners of property within Village Park as a whole.

Now Therefore, Declarant hereby declares that all of the leasehold premises upon which Village Park will be developed and more particularly described in EXHIBIT "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Declaration all of which are

established and declared and agreed to be for the purpose of enhancing, protecting and preserving the value, desirability and attractiveness of Village Park and to be for the direct, mutual and reciprocal benefit of each and every part of Village Park. Said limitations, covenants, conditions and restrictions shall create mutual equitable servitudes upon each lot or site in Village in favor of every other lot or site in Village Park and shall create reciprocal rights and obligations in, between and among all persons and/or entities having any right, title or interest in and to Village Park or any part thereof. In addition, said limitations, covenants, conditions and restrictions shall operate as covenants running with the land, binding according to the terms hereof on all persons and/or entities having or acquiring any right, title or interest in Village Park or any part thereof.

Article I

Definitions

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

Apartment	shall mean a residential unit within a building containing two or more apartments or shall mean a residential unit within a horizontal property regime defined under Chapter 514A of the Hawaii Revised Statutes.	Declaration	shall mean this Declaration of Protective Covenants for Village Park Community, and may also be referred as Community Protective Covenants or Protective Covenants or Village Park Declaration or Village Park Protective Covenants.
Architect	shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes, as amended, or a person not registered to practice architecture but with architectural qualification, experience and expertise acceptable to Declarant or the Association.	Design Committee	shall mean the Committee created pursuant to Article IV.
Association	shall mean the Village Park Community Association, a non-profit corporation described in Articles V and its successors.	Design Committee Rules	shall mean those rules adopted by the Design Committee pursuant to subsection 4.01(f).
Board	shall mean the Board of Directors of the Association.	Engineer	shall mean a person registered to perform engineering services in the State of Hawaii, under the authority of Chapter 464 of the Hawaii Revised Statutes, as amended, or a person with comparable qualification, experience and expertise approved by Declarant or the Association.
By-Laws	shall mean the By-Laws of the Association which have been or shall be duly adopted by the Association.	Excavation	shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock to a depth of more than eighteen inches.
Charter	shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 416 of the Hawaii Revised Statutes, as amended.	Family	shall mean the immediate family of an Owner or Owners (if ownership is by husband and wife) of a lot and the parents and siblings (but not members of their separate families) of such Owner or of either one of such Owners (if ownership is by husband and wife) who actually live on such lot as members of the immediate family.
Commercial Area	shall mean all of the leasehold property designated for commercial use off Kunia Road containing 4.5 acres more or less, together with any improvements constructed thereon, which is developed to provide commercial space for sale or lease to Owners.	File or Filed	shall mean with respect to any subdivision map, the map which has been recorded in the Bureau of Conveyances of the State of Hawaii and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.
Common Area	shall mean any undedicated roadways serving the single family individual lots or the areas within an incremental phase, submitted to the horizontal property regime and defined in the Declaration of the Horizontal Property Regime.	Fill	shall mean any addition of rock or earth materials to the surface of the land (except temporarily for planting) which increases the previous elevation of such surface by more than eighteen inches.
Condominium	shall mean a horizontal property regime as defined in Chapter 514A of the Hawaii Revised Statutes as amended from time to time.	Fiscal Year	shall mean the year from January 1st to and including December 31st.
		Village Park	shall mean all of the real property referred to in Article II and also referred as Village Park Community or Community.
		Village Park Community Association Rules	shall mean the rules which may be adopted, amended or repealed from time to time pursuant to Section 5.06.
		Improvements	shall include buildings, outbuildings, roads, driveways, parking areas, fences, screens, retaining walls, stairs, decks, hedges, windbreaks, planted trash

surrounds, poles, signs and other structures of any type or kind.

**Visible From
Neighboring
Property**

shall mean, with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above the ground level of any adjoining property, excluding contiguous property owned by the Owner of the property involved, but including common areas and streets, assuming that such adjoining property has a ground elevation equal to its actual elevation or the highest elevation of the ground of the property upon which such object or activity is located, whichever elevation is the lower.

Lot shall mean any lot in Village Park created by legal subdivision and designated on a duly filed subdivision map or, with respect to any apartment, condominium duplex, or multiple dwelling, a complete residential unit or residential unit.

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

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

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

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

Residential Area shall mean any real property designated as such pursuant to Article III, together with all improvements constructed thereon, which is developed to provide residential lots (as defined herein) for sale to Owners.

Road or Street shall mean any public road or street or any private paved vehicular way constructed within or upon any portion of the common areas, an apron or other paved access from such vehicular way to a residential or commercial area.

Special Assessment shall mean any assessment levied pursuant to Section 6.02 and Section 5.04(d).

Subdivide shall mean the division of any lot into two or more lots, condominium apartments or residential units.

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

Article II Property Subject to Protective Covenants

Section 2.01. All of the leasehold property comprising Village Park containing 310.384 acres, more particularly described in Exhibit "A" attached hereto and made a part hereof except the commercial area designated on Proposed Development Plan (Exhibit "B") containing 4.5 acres, shall be subject to the provisions of this Declaration of Protective Covenants for Village Park Community, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject thereto.

Village Park shall be developed in successive incremental phases of single family detached residential phases, condominium residential apartment phases with open spaces, a neighborhood commercial site, a school site and two park sites. Each *phase* will be separately subdivided in a sequential order of development.

**Section 2.02—
Amendment of
Restrictions as
Affecting
Property Prior to
Conveyance of
Same by
Declarant.** Any provision of this Declaration to the contrary notwithstanding, the Declarant may from time to time and in its sole discretion amend, repeal, add to or limit the effect of any specified covenants, conditions, limitations and restrictions hereinafter set forth in Articles III and IV with respect to any real property in Village Park owned by the Declarant. In order to make effective any such change with respect to any such property, the Declarant shall record a declaration consisting of one or more documents which, among other things:

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

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

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

**Section 2.03—
Additional
Covenants,
Conditions,
Limitations
and Restrictions
Established
by Conveyance.** No provision contained in this Declaration shall be deemed to limit or impair the right of the Declarant to add additional covenants, conditions, limitations and restrictions as affecting any real property owned by the Declarant by adding such additional covenants, conditions, limitations and restrictions in any deed or document of conveyance of such property to the prospective Owner thereof.

**Section 2.04—
Property Subject
to these
Protective
Covenants.** No property, except for that property described in said Exhibit "A" and except for property specifically added to Village Park pursuant to this Article II, shall be deemed subject to the provisions of this Declaration, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject to the provisions of this Declaration any property it may now own or hereafter acquire, other than the property described in Exhibit "A" or in any such amendment.

**Section 2.05—
Reservation to
Exclude From
these Protective
Covenants.** Declarant reserves the right to exclude from the operation and effect of and the provisions contained in this Declaration those development phases, which are isolated and separated from the rest of the Village Park by its natural features, such as cliffs, ravines, gully and streams, so that such incremental phase cannot be assimilated or be made coherent part of the Village Park including but not limited to any of the phases set aside for residential condominium apartment development, abandoned school and park sites and phases along the fringe areas of Village Park or such area as may be determined to be economically not feasible for inclusion within the development.

Article III Land Classifications and Applicable Restrictions

Section 3.01— Land Classifications.

All lots within Village Park shall be classified into one of the following classifications:

- (a) residential area;
- (b) condominium apartment area together with open space;
- (c) commercial area, reflecting the use and/or occupancy of each such lot as shown on Exhibit "B" attached hereto and made a part of the provisions of this Declaration;
- (d) school site;
- (e) park site; and
- (f) roadway.

The classification of such lots as aforesaid or as may be revised by the Declarant hereafter shall be established by the Declarant and shall be indicated and/or shown on documents and/or maps on file in the Offices of the Department of Land Utilization of the City and County of Honolulu and shall be subject to the provision of Ordinance No. 4084 of the City and County of Honolulu as Planned Development-Housing District No. R-22.

Section 3.02— Residential Area: Specific Uses and Restrictions.

Each lot in a residential area shall be for the exclusive use and benefit of the Owner thereof, subject, however, to the following:

- (a) The rights of the Association or its duly authorized agents, with respect to each lot, as provided for in Article V;
- (b) That no improvement or other work which in any way alters any lot from its natural or improved state existing on the date such lot was first conveyed by the Declarant to an Owner, shall be made or done except upon strict compliance with the provisions of Section 4.02;
- (c) That unless otherwise permitted by the Association, each lot shall be used exclusively for residential purposes and that no more than one family or no more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) shall

occupy a lot; provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

(1) any artist, artisan or craftsman from pursuing his calling upon a lot, if such artist, artisan or craftsman also uses the lot for residential purposes, is self-employed, has no employees working on the lot and does not advertise or offer any product or work of art for sale to the public upon or from such lot, unless otherwise disallowed by applicable ordinances, rules, regulations or laws of the City and County of Honolulu, or the State of Hawaii; or

(2) the leasing or renting of any lot from time to time by the Owner thereof to no more than one family or no more than two (2) persons not of the same family (excluding live-in household employees and temporary guests) for residential purposes only and not for transient accommodation purposes.

(d) That each lot and any and all improvements located thereon shall be kept and maintained by the Owner thereof in good repair, clean condition and in such manner as not to create any fire, safety or health hazard in Village Park or any part thereof, all at the Owner's sole cost and expense;

(e) That the Owner of each lot will maintain in good repair any hedge, fence or wall along any street boundary of his lot which has been erected and will also maintain any hedge, fence or wall on his lot within two feet of any common boundary between his lot and his neighbor's lot, unless he and his neighbor shall agree to demolish and remove the same; provided that each neighbor with a hedge, fence or wall along such a common boundary shall be liable to his neighbor for half the cost of maintenance or repair of such hedge, fence or wall incurred by such neighbor;

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

(g) That no animals shall be kept and maintained on any lot other than a reasonable number of suitable house pets kept for the Owner's personal pleasure and not for sale or other commercial purposes, and that no animal shall be kept and maintained on any lot which is a nuisance to neighbors;

(h) That no signs whatsoever, including without limitations, commercial, political or similar signs, visible from neighboring property shall be erected or maintained upon any lot except:

(1) such signs as may be required by legal proceedings;

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

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

(4) not more than one "For Sale" or "For Rent" sign having a maximum face area of three (3) square feet, such sign to refer only to the premises on which it is situated.

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

(j) That no truck of more than one ton capacity shall be kept, placed or maintained upon any lot so as to be visible from an adjoining street; provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one year, which is used exclusively in connection with and during the construction of any work or improvement permitted under Section 4.02;

(k) That no accessory structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the residence; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one year, which are used exclusively in connection with and during the construction of the main structure of the residence;

(l) That no trailer, truck, automobile, boat

or other vehicle shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, and that vehicles not in operating condition shall not be kept or maintained upon any lot so as to be visible from neighboring properties or adjoining streets; provided that nothing in this paragraph shall prevent an Owner from performing maintenance work and minor repairs on his own trailer, truck, automobile, boat or other vehicle in his garage;

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

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

(o) That there shall be no open burning or any other exterior fires permitted on any lot, except barbecue fires, and that no Owner shall permit any condition on his lot which creates a fire hazard;

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

(q) That no Owner of a lot shall park his car or permit his family, invitees and guests to park their cars on any public park or sidewalk area or any common area or on any portion of his lot visible from a street, except in a garage or

carport or on a paved driveway area or on a public roadway;

(r) That the Owner of a lot shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matters relating to the use and development of his lot;

(s) That a garage or carport shall be used for no other purpose other than the parking of vehicles and boats, unless the same be enclosed by a partition, wall, door or screen, normally kept closed; provided specifically that a garage or carport which is not so enclosed shall not be used for laundry or for storage purposes;

(t) That the Residential Area shall be subject to such easements and rights of way Declarant deems necessary or convenient for the successive incremental development of Village Park.

**Section 3.03—
Condominium
Apartment Area.**

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

(b) There will be appurtenant to the designated Phases of Horizontal Property Regime thereby established open spaces which shall be common areas for the use, enjoyment and maintenance of the respective Horizontal Property Regimes.

(c) The development, establishment, operation and maintenance of each of the respective Horizontal Property Regime will be in accordance with the provisions of Chapter 514A, Hawaii Revised Statutes.

(d) Declarant reserves the right and option at Declarant's discretion to effectuate the consolidation and merger of the incremental phases submitted to the horizontal property regimes to enhance and perfect the economics, desirability and attractiveness of the premises and controlled and administered by a single condominium association upon any such merger.

**Section 3.04—
Commercial
Area.**

A commercial area of approximately 4.5 acres is proposed for development into a neighborhood shopping center and other commercial uses situated adjacent to Kunia Road, as shown on Exhibit "B."

**Section 3.05—
School and
Park Sites.**

A school site of approximately 6.0 acres has been dedicated to the government and two park sites of 10 acres and 5.2 acres will be set aside for dedication to the government, all shown on Exhibit "B."

**Section 3.06—
Roadways.**

All roadways within Village Park will be dedicated to the government as public thoroughfares except such roadways determined as private roadways by Declarant.

**Section 3.07—
Property Owned
by Government
Instrumentalities,
Public Utilities,
Eleemosynary,
Religious,
Educational,
Community and
Civic
Organizations.**

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

(b) The Declarant and the Association shall each have the power to release any lot or other area owned by it, temporarily or forever, from any conditions, limitations or restrictions in this Article III or Article IV, if, in its discretion, such waiver shall be necessary advisable to obtain acceptance of said lot or area by the State of Hawaii, the City and County of Honolulu, or any government agency or instrumentality, public utility, eleemosynary institution, religious, or educational institution, or community or civic organization as aforesaid.

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

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

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

Article IV Improvement of Property

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

(a) There shall be a Design Committee, the function of which shall be to oversee and exercise control over the improvement of property in Village Park including landscaping plans and designs all for the purpose of maintaining the standards and plan of development in Village Park;

(b) The Design Committee shall consist of not less than three (3) members, at least one of whom shall be an Engineer or an Architect as defined under Article I, Definitions, and shall be designated the "Professional Member." Except for the Professional Member, the members of the Design Committee shall also be resident Owners. The initial members of the Design Committee shall be: LIONEL JAKAHI, RONALD WATASE and JON UCHIYAMA, and each shall remain a member until such time as he resigns or he has been removed and his successor appointed as set forth in paragraph (c) below. The number of members to the Design Committee may be increased by majority vote of the Association at a duly convened meeting or by the Declarant. Any member appointed to the Design Committee may resign at any time by giving written notice to whomever then has the power of his appointment or removal. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive compensation for services rendered; however, all members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties;

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

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

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

two (2) members, including the Professional Member;

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

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

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

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

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

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

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

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

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

(5) to the extent practical, standards which shall be required in the construction of any residence, apartment or condominium building.

A copy of the Design Committee Rules as they may be adopted, amended and repealed from time to time shall be made available at the office of the Association and the office of the Declarant for inspection during normal business hours by any Owner, architect or agent of any Owner or architect;

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

(h) Upon the request of any Owner and payment to the Association of a reasonable fee, the Design Committee shall issue to the Owner a certificate executed by at least two of its members certifying that as of a certain date:

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

(2) such improvements and/or work do not comply with the provisions of this Declaration. In the event such certificate indicated non-compliance with this Declaration, the certificate shall also identify the non-complying improvements and/or work and set forth the particular reasons for non-compliance. The Design Committee shall issue such certificate within thirty (30) days after demand and payment therefor has been made, and the

certificate shall be in form suitable for recordation in the Bureau of Conveyances or filing in the Office of the Assistant Registrar of the Land Court. Any purchaser or lessee from the Owner or mortgagee or holder of any other encumbrance on the property covered by such certificate shall be entitled to rely on the certificate with respect to all matters contained therein, and such matters shall be deemed conclusive as between the Association, the Declarant, the Design Committee, all Owners and the holder of any such encumbrance;

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

(j) If for any reason the Design Committee cannot be assembled to act on a particular matter or matters for a period of more than twenty (20) days, the President, or in his stead, the Vice President of the Association, may perform the functions and duties of the Design Committee for so long as the Design Committee is unable to meet. In such event, the President, or in his stead, the Vice President, of the Association, shall indicate with respect to any action taken the reasons for his acting in place of the Design Committee. In performing the functions and duties of the Design Committee pursuant to this subsection, the President or Vice President may employ an architect or engineer to render technical advice and may offer to such architect or engineer reasonable compensation as approved by the Board of Directors of the Association;

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

Any improvement, alteration, repair or other work undertaken upon any lot in a residential area, which is or may be

Conditions, Limitations and Restrictions on Improvement.

visible from neighboring property or streets, shall be subject to the conditions, limitations and restrictions set forth below:

(a) No construction or reconstruction of any improvement, alteration, repair or refinishing of any part of the exterior of an existing improvement or any other exterior work, which has a cost exceeding \$1,000.00 shall be commenced or continued upon any lot unless the Owner thereof first obtains the approval of the Design Committee as follows:

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

(2) within thirty (30) days after submission of the preliminary plans, the Design Committee shall review the plans and return them to the Owner indicating its approval or disapproval. If disapproval is indicated, the general nature of the Design Committee's objections shall also be stated. The Design Committee's failure to make return within said thirty-day period shall be deemed approval of the preliminary plans;

(3) After review of the preliminary plans has been completed, the Owner shall submit in duplicate to the Design Committee the final plans and specifications for the proposed improvement or work, which shall include where appropriate a plot plan showing easements, setback lines and contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the location of all proposed utility installations, and any landscape plans, including all trees the Owner intends to plant or remove. The plans and specifications shall also indicate all exterior materials, finishes and colors to be used. Along with the plans and specifications, the Owner shall submit his proposed construction or work schedule and shall pay a reasonable fee for the Design Committee's inspection and review;

(4) Within thirty (30) days after the submission of the final plans and specifications, the Design Committee shall either approve or disapprove the same in writing. Any disapproval shall also set forth the reasons for disapproval. If the Design Committee does not act within a thirty-day period, the final plans and specifications shall be deemed

approved as submitted. The Design Committee may not disapprove any aspect of the final plans and specifications which was apparent in the preliminary plans and previously approved by the Design Committee;

(5) If the final plans and specifications are disapproved by the Design Committee, the Owner may correct or modify the same to account for the reasons given for disapproval by the Design Committee and resubmit the final plans and specifications within thirty (30) days after receiving the Design Committee's disapproval. Within fifteen (15) days after resubmission of the corrected or modified final plans and specifications, the Design Committee shall either approve or disapprove the same in writing in the same manner set forth in paragraph (4) above. If the Design Committee does not act within said fifteen-day period, the corrected or modified plans shall be deemed approved as submitted.

(b) Approval of plans and specifications by the Design Committee as aforesaid shall be effective for a period of one (1) year and may be revoked if the work pursuant to such plans and specifications has not commenced within said one-year period or does not proceed in reasonable accordance with the proposed work schedule submitted by the Owner with the plans and specifications. The Design Committee shall give written notice to the Owner of revocation of approval, stating the reasons therefor, and revocation of approval shall be effective upon the giving of such notice. If approval is revoked for untimely commencement of the work, the Owner may not commence work pursuant to the previously approved plans and specifications without first re-obtaining Design Committee approval. In such case, The Design Committee shall treat any resubmission of plans and specifications, whether or not they are identical to the plans and specifications previously approved, as a new submission and shall not be bound by any prior decision made with respect to same. The Design Committee may also require the payment of another fee for review and inspection. If approval is revoked for the reason that work has not proceeded in a timely manner, the Owner may not proceed with any further work pursuant to the previously approved plans and specifications without first re-obtaining the approval of the Design Committee as aforesaid. If the work is abandoned at any time prior to completion, the Association may take any and all reasonable steps to have the work completed or the property restored to its pre-existing conditions and

may assess the Owner for all costs and expenses incurred in connection therewith;

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

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

(1) no reflective finishes shall be used in exterior surfaces (other than glass and the surfaces of hardware fixtures) if such exterior surfaces are visible from neighboring property;

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

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

(4) no gas tanks will be permitted which are visible from neighboring property;

(5) all outside telephone and electric power lines, water pipe lines and all other

conduits for utilities within Village Park shall be installed underground;

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

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

(8) no television or radio antennas shall be erected on the top of the roof of any dwelling unit. No structures outside of any dwelling unit so as to be visible from neighboring property or street shall be constructed without the prior approval of the Design Committee;

(9) rain gutters shall be square and of a matching type for the entire dwelling unit being served, provided that copper gutters of any shape shall be permitted but unpainted;

(10) if visible from neighboring property or streets, no accessory structures, such as playhouses, sheds, storage bins, chicken coops, dog kennels or other animal enclosures, shall be permitted unless painted in a color or colors complimentary to the main dwelling unit, and no such accessory structures visible from neighboring property or streets shall be permitted to be made out of plastic, chicken wire or unpainted reflective materials;

(11) no aluminum, plastic or canvas awnings shall be erected so as to be visible from a street;

(12) no part of the exterior of any dwelling unit visible from neighboring property or streets shall be unpainted or refinished except in accordance with the original color or finish or except in colors or finishes approved by the Design Committee.

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

(1) the improvement, alteration or repair shall be compatible and in harmony with existing structures and other improvements in the area with respect to quality and type of materials, workmanship, external design and location of the improvement, alteration or repair on the

lot, taking into account topography any ground elevation;

(2) the improvement, alteration or repair shall conform to the general plan of the entire development of Village Park;

(3) the improvement, alteration or repair shall not because of its design unreasonably interfere with the light, air or view of adjoining lots.

(f) Except as is reasonably necessary for and incident to the improvement, alteration, repair or other work undertaken upon any lot in a residential area, plans for which the Owner has obtained the approval of the Design Committee:

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

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

(3) no privately installed power, telephone or other utility lines, wires or conduits which would be visible from neighboring property with respect to individual residential lots, shall be installed upon any such lot unless Design Committee approval is first obtained in the manner provided in subsection 4.02(a) above.

(g) Each lot with a rear boundary facing a collector roadway will be subject to a barrier planting strip two feet in width parallel to the rear boundary, and will not have pedestrian or vehicular access across the rear boundary. The Owner of each such lot will be responsible to keep and maintain a landscaped hedge which will be compatible and in harmony with the hedges of the adjoining lots similarly situated subject to supervision and control of the Design Committee;

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

Article V Village Park Community Association

Section 5.01— Establishment.

There shall be a non-profit corporation known as the "Village Park Community Association" (herein referred to as the "Association") which shall have and be empowered with the rights and be charged with the duties, obligations and responsibilities set forth in this Declaration and in its Charter and By-Laws.

Section 5.02— Membership.

(a) Each and every person, corporation, partnership or other legal entity being the owner of any lot within Village Park (herein referred to as an "Owner") shall be a member of the Association;

(b) For the purposes of determining membership status in the Association, the term "Owner" of a lot within Village Park shall be deemed to include:

(1) an owner of any lot within a residential area;

(2) with regard to condominium units within a residential area, an "apartment owner" as that term is defined in the Horizontal Property Regime Act, Chapter 514A, Hawaii Revised Statutes;

(3) an owner of any lot within a commercial area;

(4) an owner of any lot within Village Park which is a private eleemosynary, religious or educational institution or community or civic organization if any; and

(5) the Declarant, so long as the Declarant is the owner of any lot within Village Park;

(c) No membership shall be terminated or forfeited and no member shall be expelled, except upon transfer of his interest in Village Park which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale or a sublease for periods more than 5 years, of such interest therein, the vendor's and/or sublessor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee and/or sublessee, such transfer in the case of agreement of sale becoming permanent upon subsequent delivery of a deed or

assignment of lease in compliance with said agreement of sale, or reverting in the vendor in the event of termination of said agreement of sale and/or termination of the sublease. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner, and upon payment of all his indebtedness to the Association on account of unpaid assessments or otherwise, and a transfer charge of not more than \$20.00, except however, that Declarant shall be exempted from this transfer charge;

(d) The membership of the Association shall be divided into three (3) classes of membership as follows:

(1) Class A members shall include all owners described in paragraphs (b)(1) and (b)(2) above;

(2) the class B members shall be the Declarant;

(3) Class C members shall include all owners described in paragraphs (b)(3) and (b)(4) above;

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

Section 5.03— Voting Rights.

Members of the Association shall be entitled to vote as follows:

(a) Each Class A member shall be entitled to one (1) vote for each lot owned, as the term lot is defined in this Declaration; provided that if more than one person or entity owns a particular lot, any one of said persons or entities shall be entitled to exercise the one vote attributable to said lot upon the decision of the majority of all co-owners of the lot;

(b) The Class B members (Declarant) shall be entitled to three (3) votes for each lot owned by it, and three-quarters of one (0.75) vote for each one thousand (1,000) square feet, rounded to the nearest thousand, of land in the Community Area owned by it which has not yet been subdivided into residential or condominium lots;

The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier;

(1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(2) on January 1, 1986.

(c) Each Class C member shall be entitled to one-fourth of one (0.25) vote for each one thousand (1,000) square feet of land owned rounded to the nearest thousand.

**Section 5.04—
Duties and
Obligations of
the Association.**

The Association shall accept, undertake and perform each of the obligations, duties and responsibilities including but not limited to the following:

(a) The Association shall assess and collect an initial membership fee of \$10.00 annually upon each Owner who shall have taken ownership and possession, either under lease, assignment of lease or agreement of sale. The Association shall have the authority to adjust the annual fee from time to time.

(b) The Association shall keep and manage the membership fees collected and disburse such amounts as may be determined by its Board of Directors as may be deemed necessary or appropriate by the Board of Directors.

(c) The Association shall have the authority to acquire and accept title to any property, real, personal and mixed, provided nothing herein shall be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association and profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them of facilities and properties of this Association.

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

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

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

appointed Design Committee.

(g) The Association shall have all the powers set forth in this Declaration, to make and enter into contracts and to acquire and dispose of property, and shall take such actions, whether or not expressly authorized by this Declaration, as may reasonably be necessary to enforce this Declaration, the Association Rules and the Rules of the Design Committee.

**Section 5.05—
Powers and
Authority of
Association.**

The Association shall have all the powers set forth in its Charter, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in its Charter and By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and which may be necessary or proper for the peace, health, comfort, safety and/or general welfare of its members. Without limitation to the generality of the foregoing, the Association shall have the following powers:

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

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

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

(2) to obtain, maintain and pay for such insurance policies or bonds, whether or not required as the Association may deem appropriate for the protection or benefit of Village Park, the Association, the members of the Board of Directors, the members of the Design Committee, or

the Owners, including without limitation, war risk insurance, builders risk insurance, workmen's compensation insurance, malicious mischief insurance and performance and fidelity bond. The authorization covering the manner of use and application of recovered funds under the policies of insurance or to negotiate loss settlement, shall be vested in the Board of Directors of the Association;

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

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

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

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

(c) The Association may from time to time employ the services of a manager to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under this Declaration; provided, however, that the Association may not delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$100.00 or for the performance of any work or services, which work or services are not to be completed within sixty (60) days, or the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.

(d) The Association shall have the authority to pay, compromise or contest any or all taxes and assessments levied against said properties placed within its jurisdiction, responsibility or ownership or upon any personal property belonging to

the Association.

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

**Section 5.06—
Village Park
Community
Association and
Rules.**

(a) The Association may from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations known as the Village Park Community Association rules (hereafter referred to as the "Association Rules") which shall govern and regulate the activities in Village Park, including but not limited to:

(b) A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, which has been certified by the Secretary or an Assistant Secretary of the Association, shall be filed in and available at all times at the office of the Association, and duplicate copies thereof shall be delivered to each Owner upon his acquisition of a lot. A copy of each new rule or of any amendment of an existing rule and notice or repeal of any rule shall likewise be given to each Owner 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 these Protective Covenants Restrictions. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

**Section 5.07—
Liability of
Members of the
Board.**

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

Article VI Funds and Assessments

Section 6.01— Operating Fund.

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

Section 6.02— Special Assessments.

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

Section 6.03— Exemptions.

With respect to any land in Village Park owned by them, the Association and those persons or entities specified in subsection 3.07(c) shall be wholly exempt from the assessments provided for in this Article VI. In addition, the Declarant shall be wholly exempt from the assessments provided for in this Article VI with respect to all land in the residential areas owned by it which has not yet been subdivided into residential or condominium lots and with respect to all land in the commercial areas owned by it upon which no commercial buildings or facilities have yet been constructed. Provided, however, the Declarant shall nevertheless provide such funds deemed reasonably required by the Association to execute and fulfill the purposes and duties of the Association in

the event the amount of assessments shall not be sufficient until 75% of the project is sold.

Section 6.04— Default in Payment of Assessments.

(a) Each assessment under this Article VI shall be a separate and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot, by acceptance of a lease therefor, whether or not it shall be so expressed in any such lease, shall be deemed to have covenanted and agreed to pay the same to the Association. If the owner fails to pay such assessment or any installment thereof when due, the Owner shall be deemed in default, and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest thereon at twelve percent (12%) per annum, together with all costs of collection, including reasonable attorneys' fees, shall be a lien upon the lot or lots owned by the Owner upon recordation by the Association of notice of such lien. Such lien shall be subject and subordinate to the lien of any first mortgage upon the lot or lots of such Owner, and the sale or transfer of any lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to the payments of assessments which became due prior to such sale, transfer or conveyance, provided, however, that no such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such notice of lien within one hundred eighty (180) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in the manner of foreclosure of a mortgage or real property, and the Association shall have the power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) Upon request, the Association shall issue a certificate stating the amount of indebtedness secured by a lien upon any lot or lots. Such certificate shall be binding conclusively upon the Association and the Owners in favor of all

persons who rely thereon in good faith as to the amount of such indebtedness existing on the date of the certificate. Any Owner may request that such a certificate be issued and may obtain a copy thereof for a reasonable fee charged by the Association.

Article VII Miscellaneous Provisions

Section 7.01— Subdivision and Consolidation.

(a) No lot within Village Park may be subdivided by any Owner until an application, including a map of the proposed subdivision, has been submitted to the Design Committee, together with a reasonable fee established by the Design Committee, and the Design Committee has approved the same. The Design Committee shall review the application to determine whether or not it conforms to the basic intent and purposes of this Declaration and to determine whether or not any Owner or Owners of lots within Village Park will be prejudiced as a result of the proposed subdivision. The Design Committee shall approve or disapprove the application within thirty (30) days after submission of same, and in the event of disapproval, the Design Committee shall give a written explanation of the reasons for disapproval to the Owner. Failure to disapprove within said period of thirty (30) days shall be deemed approval of the application. If a proposed subdivision is approved, the Design Committee shall furnish to the Owner upon his request a certificate executed by one of the members of the Design Committee stating that the map submitted with the application for subdivision has been approved.

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

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

Section 7.02— Assignment of Powers.

Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association, and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 7.03— Notices, Documents, Delivery.

(a) Delivery of any notice or other document as permitted or required by this Declaration may be accomplished either by delivery in person or by mail. If delivery

is made by mail, deli upon the Association shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the Village Park Community Association at the address designated from time to time by written notice to the Owners, and delivery upon the Design Committee shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in as aforesaid addressed to the Design Committee in care of the President of the Village Park Community Association at the latter's then designated address. The post office address of an Owner shall be the street address in Honolulu of such Owner, and delivery by mail to an Owner shall be deemed accomplished twenty-four (24) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

(b) Delivery to any member of the Board of Directors of the Association shall be deemed adequate delivery to the Association, and delivery to any member of the Design Committee shall be deemed adequate delivery to the Design Committee.

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

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

**Section 7.04—
Amendment or
Repeal-
Duration.**

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

(1) by affirmative vote of Owners having not less than three-fourths ($\frac{3}{4}$ ths) of the total votes in each class of membership, the Owners approve the proposed amendment or amendments of the repeal of any portion or portions of this Declaration of Protective Covenants at a meeting duly called, the notice of which meeting shall have stated as a purpose the consideration of such amendment or repeal giving the substance of the proposed amendments or indicating the provisions to be repealed, as the case may be;

And a certificate of the Secretary or an

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

(2) a written instrument also setting forth in full said amendment or amendments to this Declaraton, including any portion or portions thereof repealed, executed by the Owners having not less than three-fourths ($\frac{3}{4}$ ths) of the total votes in each class of membership shall be recorded.

(b) All of the limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect with respect to all property included within Village Park, to the Owners and to the Association, for a term of 30 years, and thereafter with automatic extension for successive 10 year periods, unless amended or repealed as provided in subsection (a) above; provided, however, that in any event this Declaration shall terminate on December 31, 2034.

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

(a) Except as otherwise expressly provided herein, the Association shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by or pursuant to this Declaration upon the Owner or upon any property within Village Park; and the cost of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition or failed to pay or satisfy when due any such lien or charge. No entry upon the lot of any Owner or other action to enforce any such limitation, restriction, covenant, condition, obligation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default or breach involved. Provided, however, in the event, upon the sole determination of the Association, any default or breach is deemed to be a common nuisance and/or an emergency situation, entry upon the lot may be made after a twenty-four hour written notice to abate the nuisance and/or emergency, or rectify the default or breach involved.

(b) Nothing contained in this Declaration shall be deemed to restrain or abridge the right of any Owner to seek abatement or any nuisance created or caused by any other Owner or to seek enforcement of

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Declaration*

the provisions hereof against any other Owner or the Association by proper legal proceedings brought in a court of competent jurisdiction.

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

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

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

**Section 7.06—
Rights of
Lenders.**

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

(b) Relationship With Assessment Liens.

(1) The liens provided in this Declaration for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment payment becomes due.

(2) If any Lot subject to a monetary lien created by any provision of the Declaration shall be subject to the lien of a Mortgage: (a) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (b) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage, or sale under a power of sale included in

such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not terminate the personal obligation of the previous Owner, and shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that accrue subsequent to the Events of Foreclosure.

(3) Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration.

(c) Curing Defaults. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure, nor to make any Association assessment payment which became due prior to such Mortgagee or immediate transferee obtaining title. The determination as to whether a breach is noncurable or not feasible to cure shall be made in good faith by the Board of Directors of the Association.

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

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

(f) Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, and upon the

payment of a reasonable cost determined by the Association, may be entitled to:

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

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

(3) Receive written notice of all annual and special meetings of the Owners, and may be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of the Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an institutional Mortgagee the right to call a meeting of the Owners for any purpose or to vote at any such meeting; and

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

(g) Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or his representative shall have the right, upon giving written notice to such defaulting Owner and the Association and recording in the Bureau of Conveyances of a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is acknowledged cured in writing by the Institutional Mortgagee, or determined cured by a court of competent jurisdiction.

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

**Section 7.07 —
Construction,
Compliance
with Laws,
Severability,
Singular and
Plural, Titles.**

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

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

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

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

(e) All titles used in this Declaration, including those of Articles and Sections, are intended solely for convenience of reference, and the same shall not, nor shall any of them, affect that which is set forth in such Articles and Sections, nor any of the terms or provisions of this Declaration.

**Section 7.08 —
Annexation.**

Additional residential property and Common Area may be annexed to the Properties by the Declarant or with the consent of two-thirds (2/3rds) of each class of members.

Section 7.09 —

This Declaration is subject to the provisions of Amendment to Lease dated June 22, 1978, effective as of July 1, 1974, made by and between Caroline J. Robinson Limited Partnership, a Hawaii Limited Partnership, successor in interest to First Hawaiian Bank, Trustee of the Caroline J. Robinson Trust; Bishop Trust Company, Limited, a Hawaii corporation, Trustee under the Will and of the Estate of

James Lawrence P. Robinson (also known as J. L. P. Robinson and James Lawrence Prever Robinson), deceased; Mary K. H. Robinson, also known as Mary Kapuahaulani Hart Robinson, Chinn Ho and Herman G. P. Lemke, Trustees under the Will and of the Estate of Mark Alexander Robinson, deceased, and Trustees under Deed of Trust of Mark Alexander Robinson and Mary Kapuahaulani Hart Robinson dated July 30, 1953; and James Robinson, Ltd., a Hawaii corporation; all of Honolulu, Hawaii, hereinafter called "Lessors," and HSM Ventures, a Hawaii Limited Partnership, whose general partners are Herbert K. Horita, Shigeru Horita, Masakazu Horita, Iwao Kishimoto, Kinji Kanazawa and Kazuaki Tanaka, all of Honolulu, Hawaii, the principal place of business and post office address of which is 2024 North King Street, Honolulu, Hawaii, hereinafter called "Lessee," recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13045, Page 373 and the Increment Development Lease dated the 5th day of January, 1979, by and between CAROLINE J. ROBINSON LIMITED PARTNERSHIP, a Hawaii Limited Partnership, Successor in Interest to First Hawaiian Bank, Trustee of the Caroline J. Robinson Trust; BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, Trustee under the Will and of the Estate of James Lawrence P. Robinson, also known as J. L. P. Robinson and James Lawrence Prever Robinson, deceased; CHINN HO, HERMAN G. P. LEMKE, and MILDRED TERESA CENTEIO, Trustees under the Will and of the Estate of Mark Alexander Robinson, and Trustees under Deed of Trust of Mark Alexander Robinson and Mary Kapuahaulani Hart Robinson, dated July 30, 1953; and JAMES ROBINSON, LTD., a Hawaii corporation; all of Honolulu, Hawaii, whose business and post office address is c/o BISHOP TRUST COMPANY, LIMITED, 140 South King Street, Honolulu, Hawaii 96813, as Lessor, and WAITEC DEVELOPMENT, INC., a Nevada corporation, whose business and post office address in the State of Hawaii is 828 Fort Street, Suite 600, James Campbell Building, Honolulu, Hawaii 96813, as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13481, Page 646.

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

WAITEC DEVELOPMENT, INC.,
a Hawaii corporation.

(Seal) By /s/ George H. Jones
Its Vice President

State of Hawaii }
City and County of Honolulu } ss.

On this 13th day of March, 1979, before me personally appeared George H. Jones to me known, who, being by me duly sworn, did say that he is the Vice President of WAITEC DEVELOPMENT, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said George H. Jones acknowledged said instrument to be the free act and deed of said corporation.

(Seal) Sumiko Tokumaru
Notary Public, First Judicial Circuit
State of Hawaii

My commission expires: 9/15/79

**Section 7.10—
FHA/VA
Approval.**

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Protective Covenants.

Exhibit A

DESCRIPTION
Section-II
(Portion of Lot B)

Being portions of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani and R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu Situated at Hoaeae and Waikele, Ewa, Oahu, Hawaii

Beginning at the West corner of this parcel of land, on the Easterly side of Kunia Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 1,341.08 feet South and 18,410.64 feet West, thence running by azimuths measured clockwise from True South:

1.	255° 00'	111.37 feet along the Southerly side of ditch, along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;	37.	200° 30'	245.00 feet along same;
2.	253° 40'	53.40 feet along same;	38.	206° 00'	155.00 feet along same;
3.	249° 20'	76.80 feet along same;	39.	213° 10'	35.00 feet along same;
4.	244° 30'	55.40 feet along same;	40.	218° 00'	110.00 feet along same;
5.	235° 10'	63.80 feet along same;	41.	227° 30'	95.00 feet along same;
6.	222° 15'	74.50 feet along same;	42.	235° 00'	85.00 feet along same;
7.	230° 50'	49.60 feet along same;	43.	248° 40'	55.00 feet along same;
8.	243° 35'	33.30 feet along same;	44.	252° 40'	300.00 feet along same;
9.	264° 20'	104.80 feet along same;	45.	251° 00'	200.00 feet along the Southerly side of road, along the remainders of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu and R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
10.	256° 00'	45.20 feet along same;	46.	248° 40'	100.00 feet along the Southerly side of road, along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
11.	247° 10'	43.50 feet along same;	47.	244° 30'	105.00 feet along same;
12.	240° 10'	59.20 feet along same;	48.	241° 00'	150.00 feet along same;
13.	237° 35'	62.00 feet along same;	49.	237° 40'	375.00 feet along same;
14.	234° 40'	52.50 feet along same;	50.	238° 30'	690.00 feet along same;
15.	231° 25'	54.60 feet along same;	51.	238° 00'	350.00 feet along same;
16.	226° 10'	42.90 feet along same;	52.	239° 30'	205.00 feet along same;
17.	221° 50'	69.90 feet along same;	53.	233° 32'	70.00 feet along same;
18.	224° 50'	59.40 feet along same;	54.	227° 30'	152.98 feet along same;
19.	158° 00'	18.50 feet along same;	55.	227° 30'	30.02 feet along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
20.	229° 35'	48.00 feet along same;	56.	201° 00'	255.99 feet along same;
21.	236° 10'	36.50 feet along same;	57.	276° 40'	1,399.80 feet along same;
22.	232° 00'	48.10 feet along same;	58.	24° 42'	161.00 feet along U.S. Military Reservation (Civil 759);
23.	224° 00'	67.40 feet along same;	59.	40° 20'	117.95 feet along same;
24.	217° 30'	45.20 feet along same;	60.	50° 12' 30"	384.80 feet along same;
25.	213° 00'	50.50 feet along same;	61.	321° 25'	2.30 feet along same;
26.	215° 35'	93.90 feet along same;	62.	50° 26'	182.04 feet along the Northwesterly side of U.S. Military Reservation (Civil 759); thence following along same on a curve to the left with a radius of 603.14 feet, the chord azimuth and distance being:
27.	206° 20'	54.00 feet along same;	63.	45° 25'	105.48 feet;
28.	214° 00'	56.40 feet along same;	64.	310° 24'	5.00 feet along the Northwesterly side of U.S. Military Reservation (Civil 759); thence along same on a curve to the left with a radius of 598.14 feet, the chord azimuth and distance being:
29.	200° 50'	24.70 feet along same;	65.	9° 39'	611.65 feet;
30.	189° 20'	145.00 feet along same;	66.	338° 54'	396.23 feet along the Westerly side of U.S. Military Reservation (Civil 759); thence along same, on a curve to the right with a radius of 691.34 feet, the chord azimuth and distance being:
31.	154° 30'	239.40 feet along the Southerly side of road, along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;	67.	349° 10' 30"	246.63 feet;
32.	168° 00'	90.00 feet along same;	68.	350° 27'	605.53 feet along the Westerly side of U.S. Military Reservation (Civil 759); thence along same, on a curve to the left with a radius of 1,457.69 feet, the chord azimuth and distance being:
33.	173° 30'	28.00 feet along same;			
34.	193° 00'	115.00 feet along same;			
35.	204° 00'	175.00 feet along same;			
36.	203° 15'	185.00 feet along same;			

69. 355° 23' 30" 206.33 feet;
70. 351° 20' 194.22 feet along the Westerly side of U.S. Military Reservation (Civil 759);
71. 70° 58' 32" 481.33 feet along the North side of Parcel I Interstate Highway, Federal Aid Project No. I-H1-1 (22), along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
72. 64° 11' 20" 389.92 feet along same;
73. 60° 37' 50" 597.51 feet along same;
74. 58° 52' 20" 322.93 feet along same, along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
75. 42° 10' 20" 104.40 feet along the North side of Parcel I, Interstate Highway Federal Aid Project No. I-H1-1 (22), along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
76. 58° 52' 20" 1,000.00 feet along same;
77. 61° 50' 10" 600.80 feet along same;
78. 61° 50' 10" 1,101.48 feet along Parcel 33-B, Interstate Highway, Federal Aid Project No. I-H1-1 (11), along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
79. 60° 39' 50" 221.38 feet along same;
80. 141° 46' 475.65 feet along Parcel 33-A, Interstate Highway, Federal Aid Project No. I-H1-1 (11), along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
81. Thence along same, on a curve to the left with a radius of 134.00 feet, the azimuth and distance of the chord being 103° 58' 12" 164.25 feet;
82. 66° 10' 24" 66.88 feet along Parcel 33-A, Interstate Highway, Federal Aid Project No. I-H1-1 (11), along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
83. Thence along the Easterly side of Kunia Road, on a curve to the right with a radius of 2,262.00 feet, the azimuth and distance of the chord being 157° 13' 32" 115.09 feet;
84. 158° 41' 879.27 feet along the Easterly side of Kunia Road to the point of beginning and containing a Gross Area of 316.384 Acres. Less Hoaeae (Waipahu V) Elementary School Site covered by Civil No. 39470, Final Order of Condemnation, containing an Area of 6.000 Acres and leaving a Net Area of 310.384 Acres.

SUBJECT, HOWEVER, to

Easement B, 60 feet wide, for Cane Haul Road, said easemen being more particularly described as follows:

Easement "B"

Being an Easement 60 Ft. Wide for Road Purpose over and across a portion of the above described Lot

Beginning at the southwest corner of this parcel of land, on the Easterly side of Kunia Road, being also the West corner of Parcel 33-A, Interstate Highway, Federal Aid Project No. I-H1-1 (11), the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 2,266.31 feet South and 18,046.46 feet West, thence running by azimuth measured clockwise from True South:

1. Along the Easterly side of Kunia Road, on a curve to the right with a radius of 2,262.00 feet, the azimuth and distance of the chord being 156° 20' 42" 46.01 feet;
2. 246° 10' 04" 70.87 feet along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
3. Thence along same, on a curve to the right with a radius of 180.00 feet, the azimuth and distance of the chord being 283° 58' 12" 220.63 feet;
4. 321° 46' 275.50 feet along same;
5. Thence along same, on a curve to the left with a radius of 170.00 feet, the azimuth and distance of the chord being 281° 48' 05" 218.39 feet;
6. 241° 50' 10" 1,740.24 feet along same;
7. 238° 52' 20" 747.37 feet along same;
8. Thence along same, on a curve to the left with a radius of 270.00 feet, the azimuth and distance of the chord being 211° 52' 20" 245.15 feet;
9. 184° 52' 20" 73.12 feet along same;
10. Thence along same and along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani, on a curve to the right with a radius of 230.00 feet, the azimuth and distance of the chord being 263° 41' 20" 451.27 feet;
11. 342° 30' 20" 11.37 feet along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
12. 58° 52' 20" 317.25 feet along Parcel 1 of Interstate Highway, Federal Aid Project No. I-H1-1 (22);
13. 42° 10' 20" 104.40 feet along same;
14. 58° 52' 20" 1,000.00 feet along same;
15. 61° 50' 10" 1,741.79 feet along same, along Parcel 33-B of Interstate Highway, Federal Aid Project No. I-H1-1 (11);
16. Thence along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu, on a curve to the right with a radius of 230.00 feet, the

azimuth and distance of chord being 93° 19' 35" 240.28 feet;

17. 141° 46' 343.58 feet along Parcel 33-A of Interstate Highway, Federal Aid Project No. I-H1-1 (11);

18. Thence along same, on a curve to the left with a radius of 134.00 feet, the azimuth and distance of the chord being 103° 58' 12" 164.25 feet;

19. 66° 10' 24" 66.88 feet along Parcel 33-A of Interstate Highway, Federal Aid Project No. I-H1-1 (11) to the point of beginning and containing an area of 7.550 Acres.

SUBJECT, HOWEVER, to Easement "C," 60 Feet Wide for Cane Haul Road, over and across a portion of Lot B, being a portion of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani and containing an area of 3.6 Acres more or less.

SUBJECT, HOWEVER, to Easement 4, said Easement being more particularly described as follows:

Easement 4

Easement Sixty (60.00) feet wide for Road and Utility Purposes over and across a portion of the above described parcel and being a parcel of land Sixty (60.00) feet wide extending Thirty (30.00) feet on each side of the following described centerline:

Beginning at the North end of this parcel of land, on the Northerly boundary of Parcel B, being also the end of Course 54 of the above described parcel, the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 2,439.11 feet North and 14,301.27 feet West, thence running by azimuths measured clockwise from True South:

1. 315° 30' 940.00 feet along the remainder of R.P. 4486, Apana 1, Mahele Award 4 to Luluhiwalani;
2. 311° 00' 124.04 feet along same to the Westerly side of U.S. Navy Access Road and containing an area of 1.466 Acres.

SUBJECT, HOWEVER, to Easement A, said easement being more particularly described as follows:

**Easement A
(15 Feet Wide)
For Waterline Purposes**

Over and across a portion of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu
Situating at Hoaeae, Ewa, Oahu, Hawaii

Beginning at the most Westerly corner of this strip of land and on the Easterly side of Kunia Road, the coordinates of

said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 1,479.88 feet South and 18,356.48 feet West, thence running by azimuths measured clockwise from True South:

1. 248° 41' 378.50 feet along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
2. 158° 41' 8.00 feet along same;
3. 248° 41' 15.00 feet along same;
4. 338° 41' 8.00 feet along same;
5. 248° 41' 8.00 feet along same;
6. 338° 41' 15.00 feet along same;
7. 68° 41' 8.00 feet along same;
8. 338° 41' 515.51 feet along same;
9. 349° 43' 64.15 feet along same;
10. 3° 18' 60.26 feet along same;
11. 18° 21' 80.09 feet along same;
12. 287° 18' 65.89 feet along same;
13. 310° 08' 125.36 feet along same;
14. 321° 46' 172.78 feet along same;
15. 294° 50' 88.23 feet along same;
16. 268° 48' 83.70 feet along same;
17. 241° 50' 10" 221.50 feet along same;
18. 331° 50' 10" 15.00 feet along same;
19. 61° 50' 10" 8.00 feet along same;
20. 331° 50' 10" 220.50 feet along same;
21. 61° 50' 10" 15.00 feet along the North side of the Interstate Highway—Federal Aid Project Number I-H1-1 (11);
22. 151° 50' 10" 220.50 feet along the remainder of R.P. 4490, L.C. Aw. 10,474, Apana 9 to N. Namauu;
23. 61° 50' 10" 202.10 feet along same;
24. 88° 48' 90.76 feet along same;
25. 114° 50' 95.29 feet along same;
26. 141° 46' 174.84 feet along same;
27. 130° 08' 120.80 feet along same;
28. 107° 18' 78.14 feet along same;
29. 198° 21' 93.39 feet along same;
30. 183° 18' 56.49 feet along same;
31. 169° 43' 60.92 feet along same;
32. 158° 41' 514.06 feet along same;
33. 68° 41' 378.50 feet along same;
34. 158° 41' 15.00 feet along the Easterly side of Kunia Road to the point of beginning and containing an Area of 31,853 square feet.

PARK ENGINEERING, INC.
/s/ Roy T. Yama
Registered Professional Surveyor
Certificate Number 3847-S

Pacific Trade Center
190 South King St.
Suite 2085
Honolulu, HI 96813

Tax Map Key: 9-4-02: 17
January 24, 1979

**Exhibit B
Articles of
Incorporation
of Village Park
Community
Association**

**Department of Regulatory Agencies
State of Hawaii**

In the Matter of the Incorporation
of
Village Park Community Association

Petition for Charter of Incorporation

The undersigned, a majority of whom are residents of the State of Hawaii, hereby petition, under the provisions of Chapter 416, Corporations, Section 416-19 and 416-20, Hawaii Revised Statutes, for a charter of incorporation, for themselves and their associates, as a non-profit corporation under the name of VILLAGE PARK COMMUNITY ASSOCIATION, and in connection herewith do hereby incorporate herein by reference thereto the accompanying proposed charter of incorporation wherein set forth various matters required under Section 416-20 aforesaid.

Dated at Honolulu, Hawaii, this 8th day of February, 1979.

/s/ Lionel Jakahi
/s/ Ronald Watase
/s/ Jon Uchiyama

State of Hawaii }
City and County of Honolulu } ss.

LIONEL JAKAHI, RONALD WATASE, and JON UCHIYAMA, being first duly sworn on oath, depose and say that they are the petitioners above named, that they have read the foregoing petition and attached proposed charter of incorporation and know the contents thereof; and that the matters and statements therein set forth are true to the best of their knowledge and belief.

/s/ Lionel Jakahi
/s/ Ronald Watase
/s/ Jon Uchiyama

scribed and sworn to before me
this 13th day of February, 1979,

/s/ Lorene L. Yap
Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: March 14, 1981

**Department of Regulatory Agencies
State of Hawaii**

In the Matter of the Petition
of
Village Park Community Association

Charter of Incorporation

To all to whom these presents shall come:

I, the undersigned Director of Regulatory Agencies of the State of Hawaii, send Greetings:

Whereas, LIONEL JAKAHI, RONALD WATASE and JON UCHIYAMA, all of whom are residents of the State of Hawaii, have filed with me as Director of Regulatory Agencies a verified petition to grant to them and their associates a charter of incorporation as a non-profit corporation in accordance with the provisions of Section 416-19 and Section 416-20, Hawaii Revised Statutes;

Now, therefore, know ye, that I, the said Director, in the exercise of every power and authority in anywise enabling me in this behalf, do hereby constitute the said petitioners and their associates a corporation under the laws of the State of Hawaii for the purposes and in the form hereinafter set forth.

First— The name of the corporation shall be
Name. VILLAGE PARK COMMUNITY ASSOCIATION.

Second— The location of the corporation shall be in
Principal the City and County of Honolulu, State of
Office. Hawaii, and post office address of its initial office shall be 828 Fort Street, Suite 600, said Honolulu, Hawaii.

Third— This corporation does not contemplate
General pecuniary gain or profit to the members
Objective of thereof, and the specific and exclusive
Association. purposes for which it is formed are to provide for the management, maintenance, protection, preservation, design and landscape control, planned development and mutually compatible use of the property upon which Village Park Community (hereinafter referred as "Village Park") is proposed to be

developed, and to promote the health, safety and welfare of its members, all in a manner consistent with this Charter, and the By-Laws of the Village Park Community Association and the Declaration of Protective Covenants for Village Park Community (hereinafter referred as "Declaration").

**Fourth—
Specific
Purposes and
Powers of the
Association.**

In furtherance of the foregoing objects and purposes, and in accordance with the laws of the State of Hawaii applicable to chartered non-profit corporations, the corporation shall have succession by its corporate name in perpetuity, and shall have as its specific and primary purposes the power:

(a) The specific and primary purpose of the corporation is to act as the principal agency in the form of a community association composed of owners of residential units in the Village Park Community with powers charged, delegated and assigned by the membership to conduct and carry on the duties, functions and responsibilities including but not limited to maintain, preserve, manage and administer the properties placed within its jurisdiction and control and such other facilities, and also to levy, collect, and disburse the assessments and charges, all as herein set forth.

(b) The corporation shall endeavor to preserve, maintain, and protect the natural beauty, distinctive terrain features, and the natural vegetative growth of Village Park Community.

(c) The corporation shall promote the recreation, health, safety, and the pride of ownership of the members of the corporation.

(d) The corporation shall possess and exercise all of the powers to perform all acts necessary or incidental to the administration of the affairs and for carrying out the purposes of the corporation, including any or all of the following acts or things:

(1) Insofar as permitted by law, and in accordance with the Declaration, to do any and all other things, that will promote the common benefit, health, welfare, safety and enjoyment of its membership.

(2) In connection with the exercise of any powers conferred upon the corporation, to levy regular membership assessments upon its members in accordance with the Declaration which assessments shall constitute liens upon the lands assessed subject to the enforcement provisions

(3) In order to defray extraordinary expenses incurred by the corporation as a result of the failure or refusal of any members to abide by or otherwise comply with the Declaration, the Design Committee Rules or the Association Rules, to levy special assessments against such members, which assessments shall constitute liens upon the lands assessed, subject to the enforcement provisions provided in said Declaration, and the rights to which such liens may be pledged, hypothecated or transferred as may be required.

(4) To collect and enforce payment by any lawful means of all charges and assessments provided for herein or in the Declaration or the By-Laws, including the right to sell such properties subject to any assessment lien at public or private sale on such reasonable terms and conditions as the directors of this corporation shall determine, the proceeds of any such sale to be applied first to the payment of the corporation's cost of the sale proceedings, including legal expenses, next to the payment of the delinquent amount secured by the lien and the balance, if any, to the owners of the land as their interest may appear.

(5) To sue and be sued in any court.

(6) To make and use a common seal and to alter the same at its pleasure.

(7) To acquire (by gift, purchase, lease or otherwise), own, hold, improve, build upon, operate, maintain, rent, lease, assign, sell, transfer, convey, donate, dedicate for public use or dispose of such property, real, personal and mixed, as the purposes of the corporation shall require or appear to be served, without limit as to amount, and to borrow money, to mortgage, pledge and hypothecate the same to secure any debt of the corporation, subject to the provisions of Article V of the Declaration.

(8) To draw, make, accept, endorse, assign, discount, execute and issue promissory notes, bills of exchange, bills of lading, drafts, obligations, certificates, dock and other warrants, and other instruments to be assignable, negotiable or transferable by delivery or to order, or otherwise, as the purposes of the corporation shall require.

(9) To enter into and perform contracts, undertakings and obligations of every kind and character consonant with the purposes of the corporation and subject to the limitations hereinabove set forth.

(10) To appoint such subordinate officers and agents as the activities of the corporation may require.

(11) To make By-Laws not inconsistent or in conflict with the law, the Declaration or this Charter.

(12) To adopt rules and regulations called "Association Rules" not inconsistent with and subject to the Declaration, governing and regulating certain activities within Village Park, all for the mutual benefit and welfare of the members of the corporation.

(13) And generally to possess and exercise any and all rights, privileges, powers and immunities which are accorded to the corporation under the Declaration or which are now or may hereafter be secured by law to chartered non-profit corporations and which are reasonably incidental to the fulfillment of the objects and purposes hereinabove set forth and to the exercise of any powers possessed by or granted to this corporation.

**Fifth—
Membership.**

(a) Each and every person, corporation, partnership or other legal entity being the owner of any residential lot or lots within Village Park (herein referred to as an "Owner") shall be a member of the Association.

(b) For the purposes of determining membership status in the Association, the term "Owner" of a residential lot within Village Park shall be deemed to include:

(1) An owner of any lot within a residential area as the term "residential lot" is defined in the Declaration;

(2) With regard to condominium units within a residential area, an "apartment owner" as that term is defined in the Horizontal Property Regime Law of the State of Hawaii (Chapter 514A, Hawaii Revised Statutes);

(3) An owner of any lot within a commercial area;

(4) An owner of any lot within Village Park which is a private eleemosynary, religious, educational, community or civic organization; and

(5) The Declarant of the Declaration of Protective Covenants for Village Park, so long as the Declarant is the owner of any lot within Village Park.

(c) No membership shall be terminated or forfeited and no member shall be

expelled, except upon transfer of his interest in property in Village Park which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale of such interest therein, the vendor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred in the vendee, such transfer becoming permanent upon subsequent delivery of a deed or assignment of lease in compliance with said agreement of sale or reversion in the vendor in the event of termination of said agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner, and upon payment of all his indebtedness to the Association on account of unpaid assessments or otherwise, and a transfer charge of not more than TWENTY DOLLARS (\$20.00).

(d) The membership of the Association shall be divided into three (3) classes of membership as follows:

(1) Class A members shall include all owners described in subparagraphs (b)(1) and (b)(2) above;

(2) The Class B member shall be the Declarant of the Declaration; and

(3) Class C members shall include all owners described in subparagraphs (b)(3) and (b)(4) above;

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

(f) The membership rights of any person may be suspended by action of the Board of Directors during the period when the member shall be in default in the payment of any assessment or charge levied by the corporation; but upon payment of such assessments, his rights and privileges shall be automatically restored. If the directors have adopted and published rules and regulations governing the use of the common areas, improvements and facilities, and the personal conduct of any person thereon pursuant to paragraph (p) of Article IV, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days.

**Sixth—
Voting
Rights.**

Members of the Association shall be entitled to vote as follows:

(a) Each Class A member shall be entitled to one (1) vote for each lot owned, as the term "lot" is defined in the Declaration; provided that if more than one person or entity owns a given lot, any one of said persons or entities shall be entitled to exercise the one vote attributable to said lot upon the unanimous consent of all co-owners of the lot;

(b) The Class B member (Declarant) shall be entitled to three (3) votes for each lot owned by it, and three-quarters of one (0.75) vote for each one thousand (1,000) square feet, rounded to the nearest thousand, of property in Village Park owned by it which has not yet been subdivided into lots;

The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier;

(1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(2) on January 1, 1986.

(c) Each Class C member shall be entitled to one-fourth of one (0.25) vote for each one thousand (1,000) square feet of property owned rounded to the nearest thousand.

**Seventh—
Officers;
Board of
Directors.**

(a) The officers of the corporation shall be a President, one or more Vice Presidents as may be determined in accordance with the By-Laws, a Secretary and a Treasurer. The corporation may have such additional officers as may be determined in accordance with the By-Laws from time to time. The officers shall have the powers, perform the duties and be appointed as may be determined in accordance with the By-Laws. Any person may hold two offices of said corporation if so provided by the By-Laws.

(b) The Board of Directors of the corporation shall consist of not less than three (3) persons. The directors (and alternate directors and/or substitute directors, if any) shall be elected or appointed in the manner provided in the By-Laws of the corporation and may be removed from office in the manner provided in the By-Laws and all vacancies in the office of director or of any officer shall be filled in the manner provided in the By-Laws; provided, however, that the By-Laws shall specify that the regular

election of directors and officers and the filling of vacancies in the office of directors or of any officer shall be accomplished during the annual meetings of the corporation to be held on such day and at such time and place specified pursuant to the By-Laws.

The names and addresses of the initial officers and directors of the corporation are as follows (no less than one-third of the directors are residents of the State of Hawaii):

Name & Office Held	Address
Lionel Jakahi President & Director	2024 N. King St. Honolulu, HI 96819
Ronald Watase Vice President & Director	2024 N. King St. Honolulu, HI 96819
Jon Uchiyama Secretary-Treasurer & Director	2024 N. King St. Honolulu, HI 96819

(c) The affairs of the corporation shall be conducted by the Board of Directors and all powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors except as otherwise provided by law, this Charter of Incorporation, the By-Laws of the corporation, or the Declaration, to and including full power to adopt, alter and amend the By-Laws of the corporation, to determine from time to time the number of directors within the limitations hereinabove stated, and to make and adopt proper rules and regulations for the conduct of the affairs of the corporation.

**Eighth—
Immunity from
Liability.**

No director or officer shall be liable to the corporation for any loss or damage suffered by it on account of any action or omission by him as such director or officer, unless such director or officer shall, with respect to such action or omission, be or have been guilty of willful misconduct in the performance of his duties as such director or officer.

Each person who is now or hereafter shall be a director or officer of the corporation, and his personal representatives, shall be indemnified by the corporation against all costs and expenses reasonably incurred by or imposed upon him in connection with any action, suit, proceeding, investigation or inquiry to which he may be made a party by reason of his being or having been a director or officer of the corporation (whether or not he continues to be a director or officer at the time of the incurring or imposition of such costs and expenses) except in relation to matters as

to which he shall be finally adjudged in any action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such director or officer, if in any such action, suit or proceeding there is a final adjudication that such director or officer was, or that such director or officer was not guilty of such willful misconduct, the Board of Directors and each director and officer of the corporation may conclusively rely thereon.

**Ninth—
Non-profit
Organization.**

The corporation is organized for charitable and civic purposes only and is not organized for profit, it will not issue any stock, and no part of its assets, income or earnings shall be distributed to its members, directors or officers, except for services actually rendered to the corporation. Any provision of this Charter to the contrary notwithstanding, the corporation shall not engage in any activities or any powers that are not in furtherance of the purposes of this corporation as set forth in this Charter.

The corporation shall submit, as soon as practicable, an application for a ruling from the Internal Revenue Service recognizing a tax exempt status of the organization under the Internal Revenue Code.

Declarant shall have the right to make such amendments required by the Internal Revenue Service to comply for a ruling recognizing a tax exempt status of the corporation.

**Tenth—
Voluntary
Dissolution.**

No voluntary dissolution of the corporation or liquidation of its assets shall take place without the assent of not less than three-fourths (3/4ths) of the votes in each class of membership of the corporation, obtained by vote of the members present at a meeting of the members of the corporation duly called and held for the purpose of authorizing such dissolution and/or liquidation. Written notice of the meeting setting forth such purpose shall be given to all members not less than thirty (30) days prior to said meeting. Upon dissolution or liquidation, the assets of the corporation, after payment of the corporation's just debts, shall be dedicated to one or more appropriate public agencies or instrumentalities to be devoted to purposes as nearly as practicable the same as those to which the assets were required to be devoted by the corporation. If such dedication is refused acceptance, such assets shall be granted, conveyed or assigned to any one or more non-profit corporations, associations, trust or other organizations then qualifying as exempt organizations

under Section 501(c)(3) of the Internal Revenue Code of 1954 to be devoted to charitable purposes and uses to which the assets were required to be devoted by the corporation.

**Eleventh—
Mergers and
Consolidation.**

To the extent permitted by law, the corporation may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of the members present who are entitled to three-fourths (3/4ths) of the votes in each class of the membership.

**Twelfth—
Liability.**

The property of the corporation shall alone be liable in law for the payment of its debts and discharge of its obligations. Neither the members of the corporation nor the members of the Board of Directors nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that every member of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as herein provided.

**Thirteenth—
Amendments.**

This Charter of Incorporation may be amended from time to time by vote of the members entitled to not less than two-thirds (2/3rds) of the votes in each class of the membership present at a meeting duly called and held for the purpose in conformity with the provision of Section 416-23, Hawaii Revised Statutes, or as amended. No amendment shall be effective unless and until a certificate setting forth the amendments signed and verified by two authorized corporate officers has been filed in the office of the Director of Regulatory Agencies of the State of Hawaii.

Declarant, notwithstanding the foregoing shall have the right to make such amendment to the Charter of Incorporation provided in Article IX.

**Fourteenth—
Subject to
General Laws.**

The corporation shall be subject to all general laws now in force or hereafter enacted with regard to non-profit corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Department of Regulatory Agencies of the State of Hawaii at Honolulu, this 30th day of March, 1979.

/s/ Tany S. Hong
Director of Regulatory Agencies

(seal)

By /s/ Russel S. Nagata
Corporation & Securities Administrator

Exhibit C

By-Laws of Village Park Community Association

Article I.

**Section 1—
Principal
Office.** The principal office of the corporation shall be at such place in the City and County of Honolulu, State of Hawaii, as the Board of Directors shall from time to time determine.

**Section 2—
Seal.** The corporation shall have a common seal of such form and design as the Board of Directors shall from time to time determine.

Article II. Meetings

**Section 3—
Annual
Meetings.** The annual meeting of the members of the corporation shall be held each year, on such date and at such time in the month of _____, and at such place in the City and County of Honolulu as shall be designated by the Board of Directors in the notice of annual meeting. The annual meeting shall be a general meeting, and at any such meeting any business within the powers of the corporation, without special notice of such business, may be transacted, except as limited by law, the Charter of Incorporation of Village Park Community Association (hereinafter referred as "Association"), the Declaration of Protective Covenants of Village Park Community (hereinafter referred as "Declaration"), or these By-Laws.

**Section 4—
Special
Meeting.** Special meetings of the members may be held at any time upon the call of the President or upon the call by resolution of the Board of Directors or upon the written request of members entitled to not less than twenty-five percent (25%) of the votes of the entire membership.

**Section 5—
Notices of
Meetings.** Except where and to the extent otherwise required by law, the Charter of Incorporation or the Declaration, a written notice of all meetings, annual or special, stating the place, day and hour of the meetings, and whether it is annual or special, and in case of each special meeting stating briefly the purpose thereof and the business proposed to be transacted, shall be given by personally delivering the same to a member or by mailing such notice, postage prepaid at

least five (5) days before the date assigned for the meeting to a member at his address as it appears upon the transfer books of the corporation or his usual place of business, or such notice of any meeting may be given by publication in one or more newspapers of general circulation in Honolulu, Hawaii, not less than two (2) times on separate days, the last publication to appear not less than five (5) days prior to the date assigned for the meeting. Upon notice being given in accordance with the provisions hereof, the failure of any stockholder to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings at such meeting. The presence of any member of the corporation at a meeting shall be deemed a waiver by such member of notice of the meeting.

**Section 6—
Irregular
Meetings
Validated.** Subject to such express limitations, if any, as may be contained in any provision of law, the Charter of Incorporation or the Declaration applicable to any particular action, when members entitled to three-fourths (3/4ths) or more of the votes of the entire membership shall personally or by proxy or by other authorized representations sign a written waiver of call and notice of the time and place and purpose of the meeting, the doings of such meeting shall be valid even though such meeting was never called or no notice of the same was ever given.

**Section 7—
Quorum.** At all meetings the presence of members entitled to exercise a majority of the votes of the membership shall be necessary to constitute a quorum, and the action of the members entitled to a majority of the votes present or represented at any meeting at which a quorum is present shall be valid and binding upon the corporation except as otherwise provided by law, the Charter of Incorporation, the Declaration or these By-Laws.

**Section 8—
Voting.** At each meeting of the members, each member, except where otherwise provided by the Charter of Incorporation, shall be entitled to vote in person or by representative appointed by instrument in writing subscribed by such member or by his duly authorized attorney, and filed with the Secretary, and he shall have the number of votes to which he is entitled under the Charter of Incorporation upon the date of said meeting or on the record date fixed by the Board of Directors.

**Section 9—
Adjournment.** Any meeting of the members whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, and

such adjournment may be to such time and to such place as may be determined by a majority vote of those present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting as originally called and noticed.

**Article III.
Board of Directors**

**Section 10—
Number and
Term of Office.**

A Board consisting of not less than three (3) Directors shall be elected at the annual meeting. Except as hereinafter provided, each Director shall hold office until the third annual meeting held following his election and until his successor shall have been elected. At the first annual meeting, one-third (1/3rd) of the Directors elected shall be elected to three year terms, one-third (1/3rd) of the Directors elected shall be elected to two year terms, and one-third (1/3rd) of the Directors elected shall be elected to one year terms. A determination of the number of Directors who shall serve on the Board of Directors may be made at any time by a majority decision of the current Directors. If the Board of Directors should decide to increase the number of Directors, the additional number of Directors shall be elected at the next annual meeting of members. If the Board of Directors should decrease the number of Directors, the current Directors shall continue to hold office until the next annual meeting, unless certain of the Directors should earlier resign. Any increase or decrease in the number of Directors shall be accomplished so as to maintain the schedule of retiring and replacing one-third (1/3rd) of the Board of Directors each year.

**Section 11—
Removal of
Directors.**

Any Director may be removed from office at any time and another person may be elected in his place to serve for the remainder of his term at any special meeting of members, called and held for the purpose, by the affirmative vote of the members entitled to a majority of the total votes of the membership.

**Section 12—
Chairman,
Meetings,
Notice.**

The Board may appoint a Chairman who shall preside at all meetings and serve during the pleasure of the Board. The Board shall hold meetings as often as the business of the corporation may require at the call of the President, the Chairman of the Board, or any of the Directors constituting at least one-half (1/2) of the Board, provided that the Board shall meet at least once annually immediately after the annual meeting of the members of the corporation. The Secretary shall give notice of each meeting of the Board of

Directors other than the annual meeting either orally or in writing by mailing or delivering the same not less than one (1) day before the meeting unless otherwise prescribed by the Board. The failure by the Secretary to give such notice or by any Director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of Directors is present.

**Section 13—
Quorum and
Adjournment.**

The majority of the Directors shall constitute a quorum for the transaction of business and no actions taken other than the appointment of Directors to fill temporary vacancies, as provided in these By-Laws, shall bind the corporation unless it shall receive the concurring vote of a majority of all the Directors. In the absence of a quorum, the presiding officer or a majority of the Directors present may adjourn the meeting from time to time without further notice until a quorum be had.

**Section 14—
Powers of
Board of
Directors.**

The property, affairs and business of the corporation shall be managed by the Board of Directors and, except as otherwise provided by law, the Charter of Incorporation, the Declaration or these By-Laws, all of the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors as fully and for all purposes as though exercised directly by the members; and in furtherance and not in limitation of said general powers, the Board of Directors shall have the power: to dispose of property; to appoint a General Manager and such other managers, officers or agent of the corporation as in its judgment the business may require and to confer upon and to delegate to them by power of attorney or otherwise such power and authority as it shall determine; to fix the salaries or compensation of agents and employees of the corporation and, in its discretion, to require security of any of them for the faithful performance of any of their duties; to make rules and regulations not inconsistent with law, the Charter of Incorporation, the Declaration or these By-Laws for the transaction of business; to adopt and publish rules and regulations relating to the use and enjoyment of the common areas, improvements, facilities and services and the personal conduct of members and their tenants and guests thereon; to establish penalties for infraction of the aforementioned rules and regulations, if any, and for non-payment of authorized charges and assessments made by the corporation, including the suspension of membership rights as provided in the Charter of Incorporation; to create such

committees (including the executive committee or committees) and to designate as members of such committees such persons as it shall determine, and to confer upon such committees such power and authority as may by resolution be set forth for the purpose of carrying on or exercising any of the powers of the corporation; to appoint members of the Design Committee who are to be appointed by the corporation pursuant to the Declaration; to create and set aside reserve funds for any purpose and to deposit said funds in such depository institution it may deem proper; to remove or suspend any officer and, generally, to do any and every lawful act necessary or proper to carry into effect the powers, purposes and objects of the corporation.

**Section 15—
Vacancies and
Substitute
Directors.**

If any permanent vacancy shall occur in the Board of Directors through death, resignation, removal or other cause, the remaining Directors, by affirmative vote of a majority of the whole Board may elect a successor Director to hold office for the unexpired portion of the term of the Director whose place shall be vacant.

In case of a temporary vacancy, due to the absence of any Director from the State of Hawaii or the sickness or disability of any Director, the remaining Directors whether constituting a majority or a minority of the whole Board, may appoint some person as a substitute Director who shall be a Director during such absence or disability and until such Director returns to duty. The determination by the Board of Directors of the fact of such absence or disability and the duration thereof, as shown in the minutes of the Board meeting shall be conclusive as to all persons and the corporation.

**Section 16—
Approval of
Acts of Board
of Directors.**

At any annual or special meeting of the members any or all of the acts and doings of the Board of Directors may be ratified, confirmed and approved by the members, and such ratification and approval shall be as valid and binding upon the corporation and upon all members as though it had been approved or ratified by every member of the corporation.

**Article IV.
Officers**

**Section 17—
Appointment.**

The officers of the corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer and in addition thereto, at the discretion of the Board of Directors, a Chairman of the Board, an Assistant Treasurer or Assistant Treasurers, an Assistant Secretary or

Assistant Secretaries, and such other subordinate officers with such duties as the Board of Directors shall from time to time determine. All officers shall be appointed annually by the Board of Directors and shall serve until their successors have been appointed and qualified. One person may hold more than one office, and all officers shall be subject to removal at any time by the affirmative vote of the majority of the entire Board. The Board of Directors may, in its discretion, appoint acting or temporary officers, may appoint officers to fill vacancies occurring for any reason whatsoever, and may, in its discretion, limit or enlarge the duties and powers of any officer appointed by it.

**Section 18—
Chairman of
the Board.**

The Chairman of the Board, if appointed, shall preside at all meetings of the Board of Directors and shall perform such other duties as may be required of him by the Board of Directors.

**Section 19—
The President.**

The President shall preside at all meetings of the members, and in case no Chairman of the Board of Directors is appointed or, in the absence of such a Chairman, if appointed, he shall preside at meetings of the Board of Directors. He shall exercise general supervision over the business of the corporation and over its several officers, agents and employees, subject, however, to the control of the Board of Directors. He shall also perform Design Committee functions when called upon to do so pursuant to Section 4.01 of the Declaration.

**Section 20—
Vice Presidents.**

The Vice President or Vice Presidents, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers and rights of the President provided for in these By-Laws or otherwise during the absence or disability of the President or whenever the office of President is vacant and shall perform all other duties assigned by the Board of Directors.

**Section 21—
The Treasurer.**

The Treasurer shall have custody of all the funds, notes, bonds and other valuable papers of the corporation, and shall be responsible for keeping all of the books and accounts of the corporation, and shall render statements thereof in such form and as often as required by the Board of Directors. He shall have the power to enclose for deposit or collection all notes, drafts, checks and other obligations for the payment of money to the corporation or to its order.

**Section 22—
The Secretary.**

The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the

members. He shall give notice in conformity with these By-Laws of all meetings of the members and the Board of Directors. In the absence of the President and the Vice Presidents, he shall preside until a Chairman pro tempore is chosen. He shall have charge of the membership ledger, all documents pertaining to title to all real property owned or held by the corporation and all rules, regulations and other documents and maps required to be filed with the corporation or in the office of the corporation by the Declaration, an original or duplicate of each which shall be available at all times during usual business hours for examination by members of the corporation at the principal office of the corporation. He shall also perform all other duties assigned to him by the President or the Board of Directors.

**Section 23—
Assistant
Treasurer.** An Assistant Treasurer or Assistant Treasurers, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers of the Treasurer during his absence or disability or whenever the office of Treasurer is vacant and shall perform all duties assigned to him or them by the President or the Board of Directors.

**Section 24—
Assistant
Secretary.** An Assistant Secretary or Assistant Secretaries, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers of the Secretary during his absence or disability or whenever the office of Secretary is vacant and shall perform all duties assigned to him or them by the President or the Board of Directors.

Article V. Execution of Instruments

**Section 25—
Proper
Officers.** Except as otherwise provided by law or these By-Laws, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments, shall be signed, executed and delivered by the President or a Vice President and by the Treasurer or the Secretary, or an Assistant Treasurer or Assistant Secretary; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and

delivered by such officers, agents or employees of the corporation, or any one of them, in such manner as may be determined by the Board of Directors.

**Section 26—
Facsimile
Signature.** The Board of Directors may from time to time by resolution provide for the execution of any corporate instrument or document by a mechanical device or machine, or by use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board of Directors.

Article VI.

**Section 27—
Adoption,
Amendment
and Repeal.** The By-Laws may be amended or repealed and new By-Laws may be adopted, by action of not less than a seventy-five percent (75%) in voting interest of each class of members present at a meeting of the members of the corporation duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider the adoption, amendment or repeal of the By-Laws and the general nature of the same in conformance with the provisions of Section 416-22, Hawaii Revised Statutes, or as amended.

Adoption of By-Laws.

The undersigned, being all of the signers of the Application for Charter of Incorporation of VILLAGE PARK COMMUNITY ASSOCIATION do hereby adopt the foregoing By-Laws as the By-Laws of said corporation.

Dated at Honolulu, Hawaii,
this 13th day of March, 1979

/s/ Lionel Jakahi
/s/ Ronald Watase
/s/ Jon Uchiyama

LEASE

THIS INDENTURE, made this _____ day of _____, 19____, by and between

hereinafter called "Lessor," of the first part, and

whose residence and post-office address is

hereinafter called "Lessee," of the second part,

WITNESSETH: That Lessor, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of Lessee to be observed and performed, does hereby demise and lease unto Lessee, and Lessee does hereby accept and rent:

SUBJECT to all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

TO HAVE AND TO HOLD the same, together with the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto Lessee for the term of fifty-five (55) years commencing on the _____ day of _____, 19____, subject to extension as herein provided, Lessee yielding and paying therefor unto Lessor in equal semiannual payments each in advance on the first day of _____ and _____ in each and every year during said term, provided that the first payment thereof shall be prorated to the next rental due date and paid upon the execution hereof, rent of \$ _____ per annum for and during the first _____ years of said term, and such annual rent for and during the remaining period of said term as shall be determined by mutual agreement of Lessor and Lessee or, if they fail to reach such agreement at least 90 days before the commencement of said period, by appraisal as hereinafter provided.

AND LESSOR hereby covenants with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it except as herein expressly provided.

AND LESSEE hereby covenants with Lessor as follows:

1. PAYMENT OF RENT. Lessee will pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the office of Lessor or its duly designated agent.

2. PAYMENT OF TAXES AND ASSESSMENTS. Lessee will pay or cause to be paid at least ten days before the same become delinquent all real property taxes and assessments of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, are now or may during said term be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated between Lessor and Lessee as of the dates of commencement and expiration respectively of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

3. PAYMENT OF RATES AND OTHER CHARGES. Lessee will pay before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water or any other utilities or services, whether made by governmental authority or public or community service company and whether assessed to or payable by Lessor or Lessee.

4. IMPROVEMENTS REQUIRED BY LAW. Lessee will at his own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of said premises or any part thereof.

5. OBSERVANCE OF LAWS. Lessee will at all times during said term keep said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and all recorded protective covenants and restrictions affecting said premises, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

6. REPAIR AND MAINTENANCE. Lessee will at his own expense from time to time and at all times during said term well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter built on the demised land with all necessary reparations and amendments whatsoever in good order and condition, except for damage by unavoidable casualty not herein required to be insured against, and maintain and keep said premises and all adjacent land between any street boundary of said premises and the established curb or street line in a neat and attractive condition.

7. INSPECTION. Lessee will permit Lessor and its agents at all reasonable times during said term to enter said premises and examine the state of repair and condition thereof, and will repair and make good all defects required by the provisions of this lease to be repaired by Lessee, of which notice shall be given by Lessor or its agents, within 30 days after the giving of such notice.

8. RESIDENTIAL USE. Lessee will use and allow the use of said premises only for residential purposes, and will not at any time during said term erect, place, maintain or allow on said premises more than one single-family dwelling (exclusive of outbuildings), nor keep or allow to be kept on said premises any livestock, poultry or rabbits, nor use or allow the use of any building or structure on said premises as a tenement house, rooming house or apartment house or for or in connection with the carrying on of any business or trade whatsoever.

9. BOND. Lessee will before commencing construction of any improvement on said premises deposit with Lessor a bond or certificate thereof naming Lessor as an obligee, in a penal sum not less than one-half of the cost of such construction and with a responsible corporate surety authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens.

10. SETBACK LINES. Lessee will observe any setback lines affecting said premises as shown on the map (if any) hereto attached or herein mentioned in the description of said premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of said premises and the setback line along such boundary nor maintain any hedge of a greater height than four feet above the ground level between such setback line and street boundary.

11. INSURANCE. Lessee will at his own expense at all times during said term keep all buildings now or hereafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage to Lessor and Lessee as their interests may appear, and will pay all premiums thereon when due and from time to time on request thereof deposit with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor; provided, however, that in case the main dwelling on said premises shall be destroyed by any casualty during the last ten years of the term hereof, Lessee may at his option cancel this lease by giving written notice thereof to Lessor within 30 days after such casualty on condition that before such cancellation becomes effective Lessee shall remove all remains of the damaged buildings and pay to Lessor a sum of money equal to the then present worth of the unearned annual rent for the remainder of said term calculated by compound interest discount at the interest rate then prevailing in Honolulu for residential real estate mortgage loans, and in case said dwelling shall be destroyed by any casualty at any time during said term, if such restoration thereof shall be prevented by law, Lessee may at his option cancel this lease by giving written notice thereof to Lessor at any time thereafter on condition that Lessee shall before such cancellation becomes effective remove all remains of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year, and upon either such cancellation all insurance proceeds shall be payable to and be the property of Lessee and mortgagee (if any) as their interests may appear; provided, further, that during such period as the Department of Housing and Urban Development or Veterans Administration shall own this lease all provisions of this lease requiring insurance and restoration of buildings which are substantially destroyed shall be inoperative, but such Administration shall promptly remove all remains of any damaged buildings not restored in accordance with said provisions.

12. LESSOR'S COSTS AND EXPENSES. Lessee will pay to Lessor on demand all costs and expenses including reasonable attorneys' fees incurred by Lessor in enforcing any of the covenants herein contained, in remedying any breach by Lessee of said covenants, in recovering possession of said premises, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee in which Lessee is found to be at fault and to which Lessor without any fault on its part shall be made party.

13. INDEMNITY. Lessee will indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said premises by Lessee or any other person claiming by, through or under Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises in a safe condition, and will reimburse Lessor for all its costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever.

14. CONSTRUCTION OF IMPROVEMENTS. Lessee will not erect or place on said premises any building or structure including fences and walls, nor make any additions or structural alterations to any building thereon, except in accordance with plans and specifications including a detailed plot plan, which shall be prepared by a licensed architect if so required by Lessor, first submitted by Lessee and approved in writing by Lessor, and will landscape said premises suitably for the neighborhood, and will, unless the same is already built, at his own expense within the first _____ months of said term construct and complete on the demised land a single-family dwelling which (exclusive of garage and outbuildings) shall contain enclosed floor area of at least _____ square feet.

15. WASTE AND UNLAWFUL USE. Lessee will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or use said premises for or in connection with the manufacture, sale, storage or keeping for sale or barter of any narcotics or alcoholic beverage or liquors.

16. LIENS. Lessee will indemnify and hold Lessor harmless against all liens, charges and encumbrances and all expenses in connection therewith including attorney's fees, with respect to said premises or any improvements thereon, which may result from any act or neglect of Lessee.

17. SURRENDER. At the end of said term or other sooner determination of this lease Lessee will peaceably deliver up to Lessor possession of the demised land, together with all erections and improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition except as aforesaid; provided, however, that if not then in default hereunder Lessee may within 30 days after such termination remove all buildings standing thereon.

AND IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

A. EXTENSION. From time to time during the first twenty years of the term hereby demised Lessee shall have the right to extend said term to an extended term of fifty-five years commencing on the first day of the calendar month in which Lessee gives written notice thereof to Lessor, subject to the following conditions:

- (i) The unexpired term of the lease at the time of exercising said option shall be less than fifty years;
- (ii) The extension must be for the purpose of mortgaging the leasehold interest;
- (iii) Lessee shall not then be in default in any respect hereunder; and
- (iv) The notice shall be accompanied by payment of a service charge not to exceed \$50.

In every case of extension the annual rent hereunder payable for and during the first 30 years of said extended term shall be determined as follows:

- (a) Compute to the nearest whole year 75% of the unexpired period of fixed rent at the commencement of said extended term;
- (b) Multiply the number of years computed in (a) by the fixed annual rent in effect immediately prior to such extension;
- (c) Deduct from 30 years the number of years computed in (a) and multiply that difference by the annual rent determined by mutual agreement of Lessor and Lessee within 30 days after such extension or by appraisal as hereinafter provided; and
- (d) Add the amounts computed in (b) and (c) and divide that sum by 30, and this result rounded to the nearest dollar shall be the annual rent for the first 30 years of said extended term, provided that such rent shall not without the consent of Lessor be less than the annual rent in effect immediately prior to such extension.

The annual rent hereunder payable for and during the remaining period of said extended term shall be determined by mutual agreement of Lessor and Lessee, or if they fail to reach such agreement at least 90 days before the commencement of said period, by appraisal as hereinafter provided.

B. APPRAISAL. Whenever this lease provides that the annual rent payable by Lessee for any period of the term hereof shall be determined by appraisal, such rent shall be the product of the then prevailing rate of return for similar lands (but not less than the then prime rate of interest in Hawaii) multiplied by the then market value of the demised land exclusive of improvements thereon, first deducting from such market value the then unamortized cost to Lessee of \$ _____ as the prorata share attributable to said premises for off-site subdivision improvements such as streets, sewers, water facilities and utilities in the tract of which said premises constitute part, amortized on a straight-line basis over 75 years from the date of commencement of this lease, and such return and market value shall be determined by three recognized real estate appraisers, one to be appointed by each of the parties hereto, and Lessor and Lessee shall each promptly name one such appraiser and give written notice thereof to the other party, and in case of failure of either party so to do within ten days after such notice by the other the party naming the first appraiser may apply to any person then sitting as judge of the Circuit Court of the First Circuit of the State of Hawaii for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure so to do within ten days after appointment of the second appraiser either party may have the third appraiser appointed by such judge, and the three appraisers so appointed shall proceed to determine the matters in question, and the decision of said appraisers or a majority of them shall be final, conclusive and binding on both parties hereto, and Lessor and Lessee shall each pay one-half of all proper costs and expenses of such appraisal other than attorneys' fees.

C. CONDEMNATION. In case at any time or times during the term hereof the demised premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the demised land so taken or condemned shall at once cease and determine upon acquisition by such authority of title thereto or right to possession thereof, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of any improvements on the demised land shall be payable to and be the sole property of Lessee; provided, however, that in case only part of said premises shall be so taken or condemned, the rent thereafter payable for the remainder of said term shall be reduced in an amount determined by mutual agreement of Lessor and Lessee not later than 30

days thereafter or otherwise in the proportion that the area so taken bears to the area hereby demised, and if the remaining premises shall thereby become unsuitable for residential purposes appropriate for the neighborhood, Lessee shall have the option to surrender this lease within 30 days thereafter and be relieved of further performance hereunder; provided, further, that in case all of said premises shall be taken or condemned or Lessee shall exercise said option to surrender this lease, Lessor shall pay to Lessee from and to the extent of the net proceeds payable for the demised land the then unamortized cost to Lessee for off-site subdivision improvements computed as hereinbefore provided in paragraph B; provided, further, that whenever requested so to do Lessee shall peaceably deliver up to Lessor, without any reduction in rent or option to surrender this lease, possession of such portion or portions of the demised land lying within _____ feet of any street boundary thereof at the commencement of said term as may hereafter be required, taken or condemned for any street widening.

D. ASSIGNMENTS. Lessee may assign or mortgage this lease without approval or consent of Lessor, and the assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this lease unless Lessor shall have received either a true executed copy of such assignment or written notice thereof, and also, in any case other than assignment by way of mortgage or assignment to or by the Department of Housing and Urban Development or Veterans Administration or upon foreclosure of mortgage or assignment in lieu of foreclosure, payment of a reasonable service charge not to exceed \$25 and the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money except said service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this lease only during the period such person has possession of ownership of the leasehold estate.

E. DEFEASANCE. This demise is upon this condition, that if Lessee shall fail to pay said rent or any part thereof within 30 days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Lessee to be observed and performed and such default shall continue for 30 days after written notice thereof given to Lessee or mailed to his last known address, or if Lessee then owning this lease shall become bankrupt and fail to perform any of the covenants of Lessee hereunder or shall abandon said premises, Lessor may at once re-enter said premises or any part thereof in the name of the whole and, upon or without such entry, at its option terminate this lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, and in case of such termination all buildings and improvements on the demised land shall become and remain the property of Lessor. If this lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

F. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this lease Lessor will not terminate this lease because of any default by Lessee hereunder or other cause whatsoever if, within a period of 120 days after Lessor has mailed written notice of intention to terminate this lease for such cause to the mortgagee at its last known address and also, if such mortgage is insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration, to such Department or Administration, the mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this lease capable of performance by it until such time as this lease shall be sold upon foreclosure pursuant to such mortgage, and in case of such undertaking Lessor will not terminate this lease within such further time as may be required by the mortgagee or such Administration to complete foreclosure of such mortgage or other remedy thereunder provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this lease the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person of both the fee and leasehold estates in said premises shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

G. MISCELLANEOUS. Acceptance of rent by Lessor or its agent shall not be deemed to be a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right of re-entry for breach of condition. Lessor's waiver of any breach by Lessee shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed a waiver of Lessor's right to declare a forfeiture for any other breach thereof. Any approval or consent by Lessor required by any provision hereof shall not be capriciously or unreasonably withheld. The term "premises" herein shall include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the land hereby demised. The terms "Lessor" and "Lessee" herein, or any pronouns used in place thereof, shall mean and in-

clude the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and assigns, according to the context hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

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