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FIRST RESTATEMENT OF THE DECLARATION OF CONDOMINIUM  
PROPERTY REGIME: THE CLIFFSIDE VILLAGES AT WAIPIO

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**FIRST RESTATEMENT OF THE DECLARATION OF CONDOMINIUM  
PROPERTY REGIME: THE CLIFFSIDE VILLAGES AT WAIPIO**

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WHEREAS, by Declarations of Horizontal Property Regime all dated January 14, 1988, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525757, 1541100, and 1546776, and noted on Certificates of Title shown on the attached Exhibit "A", James K. Schuler & Associates, Inc., a Hawaii corporation, Developer, submitted the property described in the Declarations and Condominium Maps 654, 661, and 666 known as the Cliffside Villages at Waipio, Phases I, II, and III to the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (See endnote 1); and

WHEREAS, the Declarations provided for the organization and operation of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, PHASES I, II, and III (the "Association") in accordance with By-Laws dated January 14, 1988, which were filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525758, 1541101 and 1546777 ("the By-Laws"); and

WHEREAS, the three phases of the project and their governing documents were merged into a single condominium project, "The Cliffside Villages at Waipio", governed by a single association by a certificate of merger dated June 13, 1989 and recorded as Document No. 1643985; and

WHEREAS, the Association of Apartment Owners of the Cliffside Villages at Waipio filed Articles of Incorporation dated May 12, 1995 with the Department of Commerce and Consumer Affairs thereby changing its name to "Association of Apartment Owners of the Cliffside Villages at Waipio, Inc."

WHEREAS, the Declaration was amended by documents all dated March 8, 1989, recorded as Document Nos. 1621530, 1621607 and 1621531, respectively, and further amended by a document dated March 25, 1998 and recorded as Document No. 2450532; and

WHEREAS, the By-Laws were amended by a document dated April 11, 2000 and recorded as Document No. 2623719; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of Directors of the Association of Apartment Owners of the Cliffside Villages at Waipio, Inc., (the "Association") established by the By-Laws to restate the Declaration to include any amendments to them and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on July 27, 2000, the Board of Directors resolved to restate the Declaration in accordance with Section 514A-82.2, Hawaii Revised Statutes.

NOW THEREFORE, the By-Laws are hereby restated to read as follows:

This Declaration is made by James K. Schuler and Associates, Inc. (the "Declarant"), which is the owner of the Land referred to later in this document.

1. Submittal of Property; Establishment and Name of Condominium; and Declarations.

1.01 In order to create a condominium project consisting of certain land and improvements pursuant to Chapter 514A, Hawaii Revised Statutes, as amended (the "Condominium Act"), the Declarant does hereby submit the Land and all improvements and appurtenances to the Land (the "property") and all of its estate, right, title and the interest therein to the Condominium Property Regime (the "Condominium") established by this document.

1.02 The name of the Condominium is "The Cliffside Villages at Waipio".  
(See endnote 2)

1.03 In furtherance thereof, the Declarant does hereby make the following declarations as to divisions, limitations, restrictions, covenants and conditions for the Condominium, and does hereby declare and agree that the property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth in this document and in the By-Laws (the "By-Laws"), which are to be duly recorded or officially filed of record in the State of Hawaii ("recorded") concurrently with this document (or nearly so), as each of them may from time to time be amended. Said declarations, restrictions and conditions are and shall constitute equitable servitudes and liens and covenants running with the land; are intended to create mutual servitudes upon each apartment within the Condominium and to create reciprocal rights between the respective owners of the apartments in the Condominium ("Apartment Owners" or simply "Owners"); and are and shall be binding on and inure to the benefit of the Declarant, its successors and assigns, and all subsequent owners and lessees of all or any part of the property, and their respective successors, heirs, personal representatives and assigns. (See endnote 3)

1.04 The Condominium was planned to be developed in three phases, as part of an overall development plan that is stated and provided for later on in this document. While the Declarant reserved the right to and did develop three phases and merged each phase into one Condominium, the Declarant initially gave no promise, representation or other assurance that any other phase would be developed, or, if

developed, that any other phase would be merged with the Condominium. (See endnote 2)

2. Land Description. The real property (the "Land") submitted in fee simple to the Condominium is described in Exhibit "A" attached hereto and by this reference made apart hereof. (See endnote 4)

3. Description and Division of the Buildings, Improvements and Apartments.

3.01 The buildings and improvements of the Condominium are in accordance with the plans recorded, together with this document, as Condominium File Plans No. 654, 661, and 666, as the same shall from time to time be lawfully amended (the "Condominium Map"), and are also described in Exhibit "B" attached hereto and by this reference made a part hereof. (See endnote 5)

3.02 The Condominium is thus divided into 184 fee simple condominium apartment estates, which are also further described in said Exhibit "B". The term "apartment" as used in this Declaration shall mean and include each of the apartment units as so described and as shown on the Condominium Map, and, unless contrary to the context thereof, the common interest, limited common elements and other easements appurtenant thereto. (See endnote 6)

3.03 Should the descriptions and divisions set forth in said Exhibit "B" conflict with the depictions and divisions shown on the Condominium Map, the latter shall control; provided, further, that the Condominium Map is intended to show only the layout, location, apartment numbers and dimensions of the apartments, and is not intended and shall not be deemed to contain any other representation or warranty.

3.04 The perimeter of each of the apartments is established by the floor area computed in accordance with Rule 16-107-6 of the Rules Relating to Condominium Property Regimes promulgated by the Real Estate Commission, as the net living area of the enclosed portion of the apartment measured from the interior surface of the apartment perimeter walls, plus lanai area. Each unit includes all walls, partitions, floors, ceilings and other improvements within this perimeter; the adjacent lanai shown on the Condominium Map; all air space within the perimeter (plus the lanai); all appliances originally furnished with each apartment; pipes, plumbing, wires, conduits or other utility or service lines serving only that apartment; the interior decorated or finished surfaces of the perimeter walls, floors and ceilings; and all glass, windows and window frames, doors and door frames along the perimeter and lanai railings (if any). But each apartment does not include any common elements in it (which are listed later).

4. Common Elements. The common elements will include all portions of the land and improvements, other than the apartments, including the buildings and all

elements mentioned in the Condominium Act as common elements which are actually constructed on the Land. The common elements shall include, but are not limited to:

4.01 The Land in fee simple.

4.02 All foundations, floor slabs, columns, girders, beams, supports, load-bearing walls, main walls, interior walls separating adjacent apartments in the same building (except the inner decorated surfaces of such walls), and roofs of the building; all exterior stairs, stairways, landings, and railings (except lanai railings); and other building appurtenances, including but not necessarily limited to, the electrical cabinets and compartments for waterheaters located on the exteriors of the buildings.

4.03 All yards, grounds, landscaping, fences, and refuse areas and facilities.

4.04 All sidewalks, pathways, parking areas, parking stalls, driveways and roads within the Condominium.

4.05 All ducts, electrical equipment, transformers, wiring and other central and appurtenant installations including power, light, water, sewer, gas and telephone, if installed; all pipes, plumbing, wires, conduits or other utility or service lines which are utilized by or serve more than one apartment, including those which run through any apartment; and central air conditioning and like utilities, if installed.

4.06 All the benefits, if any, inuring to the Land or the Condominium of: (a) all easements shown on the Condominium Map or listed in said Exhibit "A", and (b) the covenants, agreements, obligations, conditions, exceptions, reservations, easements, rights, and other matters and provisions of the Declaration for Joint Use referred to in paragraph 19.04(d) (the "Declaration for Joint Use").

4.07 All other portions of the property not specifically heretofore designated as apartments, but which are intended for common use and all other devices and installations existing for or rationally of common use or necessary to the existence, upkeep and safety of the Condominium.

As used herein, unless clearly repugnant to the context thereof, the term "common elements" also means and includes the limited common elements described later on in this Declaration.

5. Limited Common Elements. Certain parts of the common elements, called "limited common elements", are set aside and reserved for the exclusive use of certain apartments. The limited common elements thus set aside and the apartments to which they are appurtenant are set forth in said Exhibit "B". Each Owner is responsible for



keeping the limited common elements appurtenant to his or her apartment in good order and condition and for performing all maintenance and repair, at his or her expense, or, if any limited common element is appurtenant to two or more apartments, at the joint and several expense of the respective Owners thereof. (See endnote 7)

6. Easements. The apartments and common elements shall also have and be subject to the following easements:

6.01 Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and limited common elements of the building for support.

6.02 If any portion of the common or limited common elements encroaches upon any apartment or limited common element, or if any apartment encroaches upon any other apartment, or any portion of the common or limited common elements as the result of the construction, reconstructions, repair, shifting settlement or movement of any portion of the improvements, a valid easement for such encroachment and for the maintenance thereof, so long as it continues, does and shall exist. If any building or any other improvement shall be partially or totally destroyed and then rebuilt, minor encroachments by any portion of the common or limited elements upon any apartment or limited common element or by any apartment upon any other apartment or common or limited common elements due to construction shall be permitted, and valid easements for such encroachments and for the maintenance thereof shall exist.

6.03 The Association of Apartment Owners (the "Association") shall have the right, to be exercised by its Board of Directors (the "Board") or the agent engaged by the Association to manage the Condominium (the "Managing Agent"), to enter each apartment and the limited common elements from time to time during reasonable hours upon prior written notice as may be necessary for access to any common elements located in such apartment, and for the operation (including but not limited to improvement, repair, maintenance and repair) of the Condominium, and at any time for making emergency repairs therein necessary to prevent damage to any apartment or common or limited common element.

6.04 Each Apartment Owner shall have an easement in common with the Owners of all other apartments to use all pipes, wires, ducts, cables, conduits, public utility lines, if any, and other common elements, located in any of the other apartments and serving his or her apartment. Each apartment and the limited common elements shall be subject to an easement in favor of the Owners of all other apartments to use any such common elements serving such other apartments and located in such apartment or limited

common element.

6.05 The Declarant hereby reserves the right, for itself and its successors and assigns, to designate and to grant to any public or governmental authority rights-of-way and other easements which are for the sole benefit of the Condominium, or which do not materially and adversely interfere with the use, nor materially and adversely impair the value of the Condominium or any apartment in it, over, across, under and through the common elements and limited common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage, and other public services and utilities, and rights to enter for the purpose of installing, repairing, altering and removing such lines and facilities and of trimming any trees in the way thereof; provided, the Association, through the Board, and with the consent and agreement of the holders of any then existing easements affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Condominium without requiring any consideration therefor. To the extent that joinder of any Apartment Owner and lien holder or other person who may have any interest in the Land or the Condominium or any apartment in it may be required in order to validate any act or thing done pursuant to the foregoing reservation, such joinder shall be accomplished by power of attorney from each of the Owners, lien holders or other such parties, the acquiring or acceptance of ownership in an apartment or of a lien covering an apartment or any other interest in the Condominium or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

6.06 The Declarant hereby reserves the right, for itself and its successors and assigns, to conduct extensive sales activities on the Condominium, including without limitation: (a) the use of any apartments owned by the Declarant as model apartments and sales and management offices, and (b) the use of such apartments and the common elements (excluding limited common elements appurtenant to other apartments) for extensive sales displays and activities. Such sales activities are to be conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Condominium by the other Apartment Owners. Said rights of the Declarant shall last until the earlier of: (1) December 31, 1992, or (2) the date the last apartment in the Condominium and in any other phases or increments that may be developed on the land described in Exhibit "D" attached hereto, is sold and recorded.

Without limiting the generality of the foregoing, such rights shall inure to the benefit of the Declarant's mortgage lender for not only the Condominium but also for any of the land referred to in said Exhibit "D" (or for any development thereof), and to any successor or assignee of every such lender, and to any person acquiring any portion of the Condominium or such other land or development in the course of any foreclosure or other legal proceedings or in the exercise of mortgage remedies or by assignment in lieu of foreclosure. (See endnote 8)



6.07 The Declarant, its agents, employees, contractors, licensees, successors and assigns shall have an easement over and upon the Condominium as may be reasonably necessary for the completion of improvements to and correction of defects in the Condominium. This easement shall terminate thirty (30) months after the later of: (a) the "as built" verified statement required by Section 514-12 of the Condominium Act is duly recorded in the State of Hawaii, or (b) the "date of completion" as defined in Section 507-43(f), Hawaii Revised Statutes, as amended, of the improvements for which provision is made in this Declaration.

6.08 The Declarant shall restore the common elements damaged by any exercise of the rights referred to in subparagraphs 6.06 and 6.07 to their condition immediately prior to such exercise.

6.09 The Apartment Owners shall also have a non-exclusive easement shared with all members of the Gentry-Waipio Community Association to use those certain common areas of the Gentry-Waipio Community Area as shall be designated from time to time pursuant to the Master Declaration referred to in said Exhibit "A" (the "Master Declaration"), subject to the provisions of the Master Declaration.

7. Common Interest, Share of Common Profits and Expenses, and Voting.

7.01 The undivided percentage interest in the common elements (the "common interest") appurtenant to each apartment is described in Exhibit "C" attached hereto and by this reference made a part hereof. (See endnote 8)

7.02 However, upon the merger of one or more additional phases, the common interest for each apartment shall change in accordance with paragraph 19 in this document regarding phased development and merger of phases and with said Exhibit "C". (See endnote 8)

7.03 The common interest for each apartment is based upon the net living area in square feet for that apartment, plus the lanai area, divided by the total net living area, plus lanais, of all apartments, rounded off so that the total of all common interests shall equal 100%. Upon any merger, the common interest for each apartment will likewise be based upon the net living area, plus lanai, of each apartment divided by the total net living area, plus lanais, of all apartments in the merged phases, rounded off so that the total of all common interests shall equal 100%. (See endnote 8)

7.04 Each apartment shall have said percentage of common interest in all common profits and expenses of the Condominium, and for all other purposes including voting (but all costs and expenses of limited common elements to the extent incurred by the Association may be charged in a different manner, as set forth later in this document). Thus, the terms "majority" or "majority of Apartment Owners" as used in this document

mean the Owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the Apartment Owners means the Owners of apartments to which are appurtenant such percentage of the common interest.

8. Alteration and Transfer of Interests.

8.01 Except as expressly provided in paragraph 7.02, in the other parts of this document referred to in paragraph 7.02, and in paragraph 8.02: The common interest in the common elements and the limited common elements and easements appurtenant to each apartment shall have a permanent character; shall not be altered without the consent of all of the Apartment Owners affected thereby and their mortgagees, expressed in an amendment to this Declaration duly recorded; and shall not be separated from the apartment to which they appertain.

8.02 As long as at all times (or immediately subsequent to an exchange of parking stalls as provided for in this paragraph), there is at least one parking stall appurtenant to each apartment as a limited common element, as permitted by Section 514A-14, Apartment Owners (including the Declarant) shall have the right to change the designation of parking stalls appurtenant to their respective apartments as limited common elements by a written document expressly providing: (a) that the document is an amendment to this Declaration as well as a amendment to the apartment deed whereby each such Owner or Owners (other than the Declarant) acquired their title to the Apartments involved; and (b) the identification of the parking stall being transferred, the apartment to which the parking stall is appurtenant prior to the transfer, and the apartment to which the parking stall is being transferred and to which it will become appurtenant as a limited common element. Said document must be executed only by the Owner or Owners directly affected and their respective mortgagees, if any, and shall be affective upon recording. A copy of said document shall be given to the Association within 15 days of the recording thereof. To the extent that the joinder of any other Apartment Owner, lien holder, or other person who may have an interest in the Land or the Condominium or any apartment in it may be required in order to validate such transfer of parking stalls pursuant to this paragraph 8.02, such joinder shall be accomplished by power of attorney to the Apartment Owners directly affected from each of such other Owners, lien holders and other persons, the acquiring or accepting of ownership in an apartment or a lien covering an apartment or any other interest in the Condominium or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

8.03 The common interest in the common elements and the limited common elements and easements appurtenant to each apartment shall be deemed to be conveyed, leased or encumbered with such apartment even though such common interest and limited common elements or easements are not expressly mentioned or described in the

conveyance or other instrument.

8.04 The common elements shall remain undivided, and no right shall exist to partition or divide any portion thereof except as provided in the Condominium Act.

9. Purposes and Uses.

9.01 Subject to the rights reserved by the Declarant in other parts of the Declaration or in the By-Laws: Each of the apartments are intended for and shall be restricted to the following purposes as to uses, which, together with the restrictions stated in the By-Laws and in the Rules and Regulations, are intended and shall be deemed to be cumulative.

(a) The apartments shall be occupied and used only for residential purposes and no apartment shall be used as a tenement or rooming house or for or in connection with the carrying on of any business, trade or profession whatsoever. The apartment shall not be rented (a) for any period less than thirty (30) days; or (b) in any manner by which the occupants of the apartment are provided customary hotel or like services, such as room service for food and beverage, maid service, laundry and linen service, or bellboy service. Other than the foregoing obligations and the restriction set forth in this subparagraph (a) and in subparagraph (b) below, the Owners shall have the absolute right to lease, provided that every lease must be made and shall be subject to the provisions of this Declaration, the By-Laws and the Rules and Regulations referred to in the By-Laws.

(b) The apartments in the project or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any timesharing purpose or under any timesharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time-interval ownership" arrangement. The term "timesharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an apartment or apartments in the project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

9.02 Subject to the rights reserved by the Declarant and other parts of the Declaration or in the By-Laws, and subject also to the exclusive use of the limited common elements as provided in this Declaration: Each Apartment Owner may use the common elements in accordance with its purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject to the right of the Board:

(a) Upon the approval of 75% of the Owners, to change the use of the common elements;

(b) On behalf of the Association to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the Apartment Owners for the originally intended special purpose, as determined by the Board; provided that unless the approval of 75% of the Owners is obtained, any such lease shall not have a term exceeding 5 years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than 60 days' written notice; and

(c) To lease or otherwise use for the benefit of the Association those common elements not falling within subparagraph (b) above, upon obtaining (1) the approval of 75% of the Owners, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of limited common elements, and (2) approval of all mortgagees of record on apartments with respect to which Owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees.

9.03 The Association shall have the right and power to enact, amend and repeal rules and regulations reasonably restricting and regulating the use of the Apartments and the common elements; provided, however, such rules or regulations shall be enacted, amended, or repealed in accordance with, and shall be consistent with the terms of this Condominium Declaration and the By-Laws, the Declaration for Joint Use, and the Regulatory Agreement, if any, which the Declarant may elect to execute on behalf of the Association as provided for later on in this Declaration (the "Regulatory Agreement, if any"), and shall not be in derogation of the rights reserved by the Declarant in this Declaration or in the By-Laws.

10. Administration: Governing Documents and Law; The Association, Its Members and Certain Rights and Duties.

10.01 The administration of the Condominium shall be governed by the Condominium Act, the Condominium Declaration, the By-Laws and any rules and regulations ("Rules and Regulations") promulgated pursuant to the By-Laws, agreements, decisions and determinations lawfully made by the Association, the Board, or the Managing Agent, as all of the same may be lawfully amended from time to time. The administration of the Condominium shall also be governed by the Declaration for Joint Use referred to in paragraph 19.04(d) (the "Declaration for Joint Use") and the Regulatory Agreement, if any. (See endnote 9)

10.02 The administration of the Condominium shall be vested in the Association. Apartment owners acting for any purpose in connection with the common

elements or the government, operation or administration of the Condominium and in accordance with the Condominium Act, the Condominium Declaration and the By-Laws, shall be deemed to be acting as the Association.

10.03 Each Owner of an apartment upon acquiring title thereto automatically shall become a member of the Association, and shall remain a member thereof until such time as his or her ownership of such apartment ceases for any reason, at which time his or her membership in the Association automatically shall ease; provided, however,

(a) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, a lessee of an apartment shall be deemed to be the Owner thereof;

(b) The purchaser of any apartment pursuant to an agreement of sale filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, shall have all the rights of an Apartment Owner, including the right to vote, provided that the seller may retain the right to vote on "matters substantially affecting his [or her] security interest in the apartment" as that phrase is used in the Condominium Act; and

(c) In the event that an apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Owner or Owners of such apartment to the extent of their interests therein, except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in such trust shall have all of the rights and duties of an Apartment Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the Owner and shall have all of the rights and obligations of ownership.

10.04 In providing such administration, the Association shall, among other things:

(a) Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks, street lights, 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 the common elements or any part thereof.

(b) Keep all common elements of the Condominium 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 during the period that they are



applicable to the Condominium or the use thereof.

(c) Well and substantially repair, maintain, amend and keep all common and limited common elements of the Condominium, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever, and maintain and keep the Land and all adjacent land between any street boundary of the Condominium and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the limited or common elements of the Condominium.

(d) Before commencing or permitting construction of any improvement to the common or limited common elements of the Condominium costing in excess of Twenty-five Thousand Dollars (\$25,000.00), obtain a bond or certificate thereof naming as obligees and collectively the Association, the Board, and all Apartment Owners and their respective mortgagees, as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of all mechanics' and materialmen's liens arising under Section 514A-16, Hawaii Revised Statutes, as amended. (See endnote 10)

(e) Not make or suffer any strip or waste or unlawful, improper or offensive use of the Condominium, nor commit any act or neglect whereby the Condominium or any part thereof at any time becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever.

(f) Observe any setback lines affecting the Land and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Land and the setback lines along such boundary.

(g) Observe and perform the provisions of: the Declaration for Joint Use and the Master Declaration that are applicable to the Land or the Condominium, and the Regulatory Agreement, if any.

Nothing in this paragraph 10.04 is intended or shall be deemed to relieve any Owner of his or her responsibility, pursuant to other provisions of this Declaration and the By-Laws, for limited common elements appurtenant to his or her apartment.

11. Compliance with Condominium Declaration and By-Laws, Declaration for Joint Use and Regulatory Agreement (If Any). The Association, all Apartment Owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Condominium, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws, the Declaration for Joint Use, the Regulatory Agreement

(if any), and all agreements, decisions and determinations, and resolutions, rule and regulations of the Association lawfully made or amended from time to time. The failure to comply with any of the same shall be grounds for action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or the Managing Agent on behalf of the Association, or, in the proper case, by any aggrieved Apartment Owner. Nothing stated in or inferable from this Declaration or the By-Laws is intended or shall be deemed to abridge the right of any aggrieved Owner or the Association to bring and maintain an action against another Owner or the Association, as the case may be, for failure to comply with the documents or law governing this Condominium. (See endnotes 2, 3, and 9)

12. Managing Agent and Service of Process. Operation of the project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the By-Laws except that the initial Managing Agent shall be Certified Management, whose address is 98-1238 Kaahumanu Street, Pearl City, Hawaii 96782. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Act. In addition, process may be served upon any member of the Board who has a residence or place of business with the City and County of Honolulu, State of Hawaii. Any officer of the Declarant is hereby designated as the agent to receive service of process until such time as the Board is elected. The Declarant's address is: 1001 Bishop Street, Pacific Tower, Suite 1060, Honolulu, Hawaii 96813.

13. Common Expenses.

13.01 All charges, costs, and expenses incurred by the Association for or in connection with the administration of the Condominium (including, without prejudice to the generality of the foregoing, operation of the Condominium and maintenance, repair, rebuilding, and restoration of the common elements, and any additions and alterations thereto; all costs and expenses incurred pursuant to the Declaration for Joint Use; all labor, services, materials, utility services and equipment therefor; all liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident, fire, or any nuisance thereon; and all premiums for fire and extended coverage and liability insurance required herein with respect to the Condominium; and the cost of all utility services, including water, electricity and gas, garbage disposal and any other similar service unless separately metered) shall constitute common expenses for which the Apartment Owners shall be severally liable in proportion to their respective common interests; provided however, that Apartment Owners shall be charged for costs and expenses incurred with respect to limited common elements as follows: Each Apartment Owner shall be charged all costs and expenses (including, but not limited to, maintenance, repair, replacement, additions and improvements) of each limited common element appurtenant to his apartment. If a limited common element is appurtenant to two or more apartments, all of such costs shall be charged to and divided among each Owner of such of an apartment in the proportion that the common interest to his or her apartment bears

to the total common interest of all such apartments. However, it is recognized that extra costs and work may be incurred to account and charge Apartment Owners separately for limited common elements; that such extra costs and work may not be justified when taking into account the amount of any such cost or expense, the difficulty of segregating such costs, the number of apartments to which similar limited common elements are appurtenant, the apparent difference in the amount of the various assessments to Apartment Owners if such cost and expenses were separately charged rather than being assessed on the basis of each apartment's common interest, and other relative factors. Accordingly, the Board may decide by resolution to assess certain types of costs and expenses of limited common elements or to assess all costs and expenses of certain similar limited common elements to all Owners in accordance with the common interest appurtenant to their respective apartments, if the Board, in its discretion, determines that such a method of assessment would, in the circumstances, be equitable; and such a determination shall be final and binding on all Apartment Owners in the absence of a clear and convincing showing of an abuse of discretion by the Board. (The preceding provisions are not intended to and shall not relieve the Owners of their responsibilities for limited common elements appurtenant to their respective apartments as provided in other provisions of this Declaration and the By-Laws.) Rent and real property taxes and special assessments referred to in Section 514A-6 of the Condominium Act shall not be common expenses, and no payments thereof shall be payments of such common expenses.

The Board shall from time to time assess the common expenses against all the apartments in their respective proportionate shares as aforesaid. The unpaid amount of such assessments together with all special assessments, penalties, fines, late charges, interest, costs and reasonable attorney's fees, if any, against any apartment shall constitute a lien against such apartment which may be foreclosed as provided in the By-Laws and/or in the Condominium Act. All assessments of common expenses attributable to casualty and liability insurance, when collected, shall be escrowed separately and used only for insurance premiums.

13.02 No Apartment Owner may exempt himself or herself from liability for his or her contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his or her apartment.

13.03 When the mortgagee of a mortgage of record or other purchaser of any apartment acquires title to such apartment as a result of a forfeiture or as a result of foreclosure of the mortgage, they and their respective heirs, successors, legal representatives and assigns shall not be liable for the share of the common expenses or assessments chargeable to such apartment which become due prior to such acquisition of title. Such unpaid share shall be deemed common expenses collectible from all Apartment Owners, including such mortgagee or such other purchaser and their respective heirs, successors, legal representatives, and assigns. (See endnote 11)

14. Reserve Fund or Funds. The Board shall establish a working capital fund for the initial months of the Condominium operations equal to at least two months' estimated common expenses for each apartment. The Board shall also establish and maintain a maintenance reserve fund or funds by the monthly assessment against and payment by all the Apartment Owners in proportion to their respective common interests, of such annual amounts as the Board determines to be adequate to provide for the common utilities, insurance, maintenance, repair, restoration, and replacement of the common elements and other expenses of administration of the Condominium, and the furniture, fixtures, and mechanical equipment thereof, and for such other purposes as the Board deems necessary, all of which shall be deemed conclusively to be a common expense. Such fund or funds shall meet the requirements of the Regulatory Agreement, if any and Section 514A-83.6, Hawaii Revised Statutes. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or decreased at the discretion of the Board. All assessments attributable to insurance shall be escrowed separately and used only for insurance premiums. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the Apartment Owner. The proportionate interest of each Apartment Owner in said fund or funds shall not be withdrawn or assigned separately but shall be deemed to be transferred with such apartment even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established hereby is terminated or waived, said fund or funds remaining after full payment of all common expenses of the Association shall be distributed to all Apartment Owners, except for the Owners of apartments reconstituted as a new condominium property regime, in proportion to their respective common interests. (See endnote 12)

15. Insurance (Casualty and Liability) and Fidelity Bonds.

15.01 Fire and Extended Coverage Insurance. The Association shall procure and at all times maintain from a company or companies qualified to do business in Hawaii and having a financial rating by Best's Insurance Report of Class VI or better (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 15.01 called the "Policy") of fire insurance, with special extended coverage endorsement or such broader forms of protection as the Board shall determine (including flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973, if the Condominium is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development), for an amount as nearly as practical equal to the full replacement cost without deduction for depreciation, with an Inflation Guard Endorsement, covering the apartments and fixtures therein and the buildings, fixtures and building service equipment and the common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings, and at the option of the Association, all exterior glass, but excluding any improvements made



by an Owner, which the Owner himself may insure, and excluding property of every kind and description while underground (meaning below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Association. The cost of the Policy shall be a common expense, and shall be assessed to the Owners by the Board. The Policy (unless unobtainable at a reasonable cost):

(a) Shall contain no provision limiting or prohibiting other insurance by the Owner of any apartment, but shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution, by reason of any such other insurance;

(b) Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board of [sic] the Owner or tenant of any apartment or by reason of any act or neglect of the Board or the Owner or tenant of any apartment;

(c) Shall provide that the Policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association) except by the insurer giving to the Board and each Owner, first mortgagee of each apartment and any other person who shall have requested such notice from the insurer at least sixty, (60) days' prior written notice thereof.

(d) Shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to the Condominium Declaration and these By-Laws not to repair, reinstate, rebuild or restore the damage or destruction.

(e) Shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the Owner of any apartment;

(f) Shall provide that any loss shall be adjusted with the insured and the Owner and mortgagee of any apartment directly affected by the loss;

(g) Shall contain a standard mortgagee clause which:

(1) Shall name the holder of any mortgage affecting any apartment whose name shall have been furnished to the Board and to the insurer;

(2) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the Owner or tenant of any apartment;



(3) Shall waive: (a) any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy; (b) any requirement that the mortgagee pay any premium (provided, that if the Board fails to pay any premium due or to become due under the Policy, the mortgagee may pay the same prior to termination of the Policy by reason of nonpayment of such premium); (c) any contribution clause; and (d) any right to be subrogated to the right of any mortgagee against the Owner or tenant of any apartment or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability against the mortgagor or Owner, but without impairing the mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

(4) Shall provide that, without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause, if in excess of Twenty Five Thousand Dollars (\$25,000.00), shall be payable to a corporate trustee selected by the Board which shall be a bank or trust company or real estate management company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000.00), herein referred to as the "Insurance Trustee" or "Trustee"; and

(5) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees of any apartment, in their order of priority;

(h) Shall provide for payment of the proceeds to the Insurance Trustee if the total proceeds payable on account of any one casualty exceed Twenty Five Thousand Dollars (\$25,000.00); and

(i) Shall require the insurer, at the inception of the Policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the Policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Board shall provide this information to each Owner.

15.02 Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii and having a financial rating by Best's Insurance Report of Class VI or better (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 15.02 called the "Policy") of public liability insurance to insure the Board, each Owner, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon or construction work under a Comprehensive General Liability form, with minimum limits of not less than \$300,000 for damage to property and not less than \$2,500,000 for

personal injury to one or more persons arising out of any one accident or occurrence. The Policy:

(a) Shall, if obtainable, not relieve the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Managing Agent or the Board, or because of any breach of warranty or condition caused by the Owner of any apartment or any act or neglect of the Managing Agent, the Board or the Owner or tenant of any apartment; and

(b) Shall provide that Policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association) except by the insurer giving to the Board and each Owner, first mortgagee of each apartment and any other person who shall have requested such notice from the insurer at least sixty (60) days' prior written notice thereof.

(c) Shall contain a "severability of interest" endorsement precluding the insurer from denying the claim of any Owner because of negligent acts of the Association or any other Owner.

(d) Shall, if obtainable at a reasonable cost, contain a waiver by the insurer of any right of subrogation to any right of the Board, the Managing Agent or Owners against any of them or any other persons under them.

15.03 Fidelity Bonds. The Board shall require that all officers, employees and agents of the Association handling or responsible for its funds, including but not limited to the Managing Agent, shall furnish adequate fidelity bonds as required in the By-Laws and the Condominium Act. If this Declaration and the By-Laws shall hereafter be lawfully amended so that there is no Managing Agent, subject to the requirements of the Condominium Act, the amount of such fidelity bonds shall be in an amount equal to \$500 multiplied by the number of apartments in the Condominium, but in any event not less than \$20,000 nor greater than \$100,000.

16. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the Condominium, the proceeds of any award of compensation for any improvements shall be payable to a condemnation trustee (the "Condemnation Trustee") which shall be a bank, trust company or real estate management company designated by the Board doing business in Hawaii and having net assets of not less than Five Million Dollars (\$5,000,000.00).

16.01 If the entire Condominium is taken, the Condemnation Trustee shall pay to each Owner and mortgagee, as their interests may appear, that portion, as shall equal the common interest appurtenant to each apartment, of the condemnation proceeds.

16.02 In the event of a partial taking of the Condominium in which (i) any apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the apartment and to the Board, then such apartment shall be removed from the Condominium and the Condemnation Trustee shall disburse to the Owner and any mortgagee of such apartment, as their interests may appear, in full satisfaction of their interests in the apartment, the portion of the proceeds of such award allocable to such eliminated or removed apartment after deducting the proportionate share of such apartment in the cost of debris removal.

16.03 In the event of any partial taking of the Condominium, the Board shall, subject to the provisions of the preceding sentence concerning removal of an apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation, or, if repair and restoration in accordance with such design are not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be approved by the Board and the Owner and the mortgagee of record of each apartment in the Condominium remaining after such taking. Such work shall be undertaken, and disbursements therefor shall be made, in the manner prescribed in paragraph 17 hereof. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the Board shall pay such excess according to the same procedure set forth in said paragraph 17 in case of damage to the Condominium.

16.04 If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and any mortgagee of a removed apartment and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Owners in accordance with their common interest prior to the condemnation.

**17. Damage, Destruction and Restoration.** If a building is damaged by fire or other casualty which is insured against and said damage is limited to a single apartment, the insurance proceeds shall be used by the Board or the Trustee for payment of the contractor retained by the Board to rebuild or repair such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all costs of repair, the remaining deficiency shall be paid as a special assessment to the Owner of said apartment.

**If such damage extends to two or more apartments or extends to any part of the limited common elements or to the common elements:**

**(a) If the Owners of the apartments do not within sixty (60) days after such casualty or, if by such date the insurance loss has not been finally adjusted, within thirty (30) days after such final adjustment, agree in writing in accordance with the provisions**

of this Condominium Declaration that the building or any portion thereof need not be rebuilt or repaired, or if the Owners at an earlier date agree to rebuild immediately, then the Board shall contract to repair or rebuild the damaged portions of the building or buildings, including all apartments so damaged, as well as common elements:

(i) In accordance with plans and specifications therefor which will restore the same in conformity with the design immediately prior to the destruction; or

(ii) If reconstruction in accordance with such design is not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be approved by the Board; provided, that, if such modified plan eliminates any apartment and such apartment is not reconstructed, the Insurance Trustee shall pay to the Owner of such apartment the portion of the insurance proceeds allocable to such apartment (less the proportionate share of such apartment in the cost of debris removal) and shall disburse the balance of the insurance proceeds as hereinafter provided.

The insurance proceeds shall be paid by the Trustee to the contractor employed for such work in accordance with the terms of the contract for such construction and in accordance with the terms of this paragraph 17. If the insurance proceeds are insufficient to pay all the costs of repairing and rebuilding all damaged apartments as well as the common elements and limited common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds as a common expense, and if the reserves for these expenses are insufficient for this purpose, the Board shall levy a special assessment on the Owners in the proportions prescribed pursuant to this Condominium Declaration and the By-Laws for the allocation of common expenses.

If a decision is made in accordance with this Condominium Declaration and the Condominium Act not to repair or rebuild all or any lesser number of damaged or destroyed apartments, the insurance proceeds allocable to any apartment which is not to be rebuilt (hereinafter called an "eliminated apartment"), less the proportionate share of such apartment in the cost of debris removal, shall be paid to the Owner and any mortgagee of the eliminated apartment as their interests may appear. The remaining insurance proceeds shall be paid to the Insurance Trustee, who shall apply such moneys to repair and rebuild any portion of the buildings that are to be reconstructed in accordance with this paragraph. If a decision is made to eliminate an apartment, the common interests and other rights of the remaining Owners in the Condominium shall be adjusted by amendment of this Condominium Declaration; provided, that the common interest of any Owner shall not be altered without his or her consent. The Owner of any eliminated apartment shall be discharged from all obligations to the Condominium after proper amendment of this Condominium Declaration. Alternatively, if this Declaration is not amended so as to discharge the Owners of eliminated apartments of all obligations to the Condominium and so as to adjust equitably the common interests appurtenant to those

apartments not eliminated, the Owner of any eliminated apartment may, pursuant to Section 514A-92, Hawaii Revised Statutes, convey his or her interest to the Board for all other Owners and thereby be discharged of all obligations to the Condominium. The Owner of any eliminated apartment may, in addition to his or her allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.

(b) The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, subject to the following conditions:

(i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work;

(ii) Each request for payment shall be made on seven (7) days' prior notice of the Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that: (a) all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials); and (b) when added to all sums previously paid out by the Trustee, the sum requested does not exceed the value of the work done to the date of such certificate;

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or other evidence satisfactory to the Trustee showing that no mechanics', materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the premises or any part of the work;

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by regulation or law to render occupancy of the premises legal;

(v) The fees and expenses of the Trustee as determined by the Board and the Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

(vi) The Trustee may impose other reasonable conditions consistent with the foregoing.



(c) Upon completion of the work and payment in full therefor, any remaining insurance proceeds then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners and mortgagees of the apartments in proportion to the respective common interests appurtenant to the apartments.

(d) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Owner or lessee. To the extent that any loss, damage or destruction to the property of any Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Owner, or the Association. All policies of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation by the insurers.

18. Percentage of Votes Required for Rebuilding. In the event of damage or destruction of all or any part of the Condominium, and where an election is otherwise permissible under the other provisions of this Declaration and the By-Laws, the Condominium shall be rebuilt, repaired or restored unless at least 80% of the Apartment Owners vote not to rebuild, repair or restore. The Board shall send notice in accordance with the By-Laws to all Owners entitled to vote at a special meeting of the Association against any proposed rebuilding or restoration. Such notice shall recite: the nature and extent of damage; the right of specified Owners to vote against rebuilding or restoration; the percentage of votes necessary to prevent rebuilding or restoration; the time when or within which any such vote must be cast; the place and manner in which any such vote must be cast; whether the loss is covered by insurance, and if so, the final insurance adjustment; and any other information deemed relevant by the Board.

19. Phased Development and Merger of Phases; Other Reserved Rights of the Declarant.

19.01 Background Information: General Plan for Total Development. The Declarant is planning the development of the 2 parcels of land adjoining the Condominium, which are described as Lots 11920, 11921 and 11924 in Exhibit "D" attached hereto and by this reference made a part hereof. The present plan for such development may be derived from the site plan which is a part of the Condominium Map. The "Phase I" shown on said site plan is this Condominium; "Phase II" is the present plan for Lot 11920; and "Phase III" is the present plan for Lots 11921 and 11922. Each contemplated building type shown on said site plan for these additional Phases corresponds to one (or a portion of one) of the building types as shown for this Condominium, with corresponding unit types, locations, and unit mixes and number of units. The Declarant would determine in its discretion supporting and servicing common elements beneficial to each of these Phases, and, with the advice of an architect and professional engineer, the location of the buildings and common elements of each additional Phase. The buildings in each Phase are

planned to be of substantially identical architectural style, quality and size as the previous Phases, with changes, if any, made where necessary because of changes required by the City and County of Honolulu in order to obtain the necessary building permits. If the Condominium is merged with Phases II, and III and developed in accordance with the present plan, the common interest for each apartment in the Condominium would be changed to that common interest set forth in said Exhibit "C". The Declarant is submitting this general plan for total development (the "overall plan") for approval by the Administrator (the "VA Administrator") for the Veterans Administration (the "VA"). (See endnote 13)

Nothing in this paragraph or any other provision of this Declaration, however, is intended to or shall be deemed to obligate the Declarant to follow this plan. The Declarant has NO obligation to develop any one or more of these Phases, or to merge this Condominium with any one or more of these Phases, if developed. The Declarant also has the right to modify the present plan for each additional Phase by varying the mix and/or number of apartments; by modifying, deleting and/or adding apartment types; by modifying, deleting and/or adding building types or common elements; and by varying the specific common interest upon any merger or mergers from those stated in said Exhibit "C", as may be appropriate. However, if the Declarant does not follow the overall plan for each such Phase, it may not be able to satisfy, with respect to that Phase, the requirements for merger set forth in paragraph 19.02 below; and, therefore, while the Declarant has the right to develop each additional Phase in a manner different than as provided for in the overall plan, the Declarant may not have the right to merge any such Phase or Phases with this Condominium. Whether the overall plan is followed or modified, however, the Declaration for Joint Use, as the same may be lawfully amended from time to time, shall continue to be binding upon the Land and the Condominium.

19.02 Merger Provisions. At any time or times prior to December 31, 1992, notwithstanding anything stated in or inferable from any other provision of this Declaration or the By-Laws, the Declarant shall have the right at its option (but is not obligated) to amend this Condominium (Lot 11919, Phase "I") by expanding it by way of merger with any one or more condominiums developed on said Lots 11920 (Phase "II") and/or 11921 and 11922. (Phase "III"). A merger of this Condominium may occur with respect to Phase II and Phase III, or any one or all of them in any order, at the same or different times, and a merger with respect to one or some of said Phases shall not affect the right of the Developer to merge another Phase or Phases at a later date.

Every such merger shall take effect with respect to any one or more of such additional Phases upon the happening of all of the following conditions with respect thereto:

(a) Filing by the Declarant in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") of this Condominium Declaration, the By-Laws and the Condominium Map for this Condominium, plus all lawful amendments

thereto, including but not limited to an amendment to the Condominium Declaration to which is attached a verified statement of a registered architect or professional engineer certifying that the final plans of the Condominium theretofore filed fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built (this type of a certificate being hereinafter called an "As-Built Certificate").

(b) Filing in the Land Court by the Declarant of a Declaration of Condominium Property Regime and By-Laws covering each additional Phase, with all lawful amendments thereto including an "As-Built Certificate" for each such Phase, in a form substantially identical to the corresponding documents for this Condominium (except for the descriptions of apartments, the common elements (including limited common elements) and the percentage of common interest therein, and with such changes as may be appropriate due to changes in the applicable law); and a Condominium Map depicting the plot and floor plans of the additional Phase or Phases, all complying with the requirements of the Condominium Act. However, if the plan for any such Phase or Phases is not consistent with the overall plan referred to in paragraph 19.01, then the prior written approval of the VA Administrator must be obtained before any merger involving any such Phase or Phases may take effect; and, in any event, the Declarant may not merge any Phase with the Condominium if the square footages of all of the apartments, including lanais, for such Phase is more or less than the maximum or minimum square footages set forth in said Exhibit "D" [NOTE: The maximum and minimum common interests for each of the apartments in this Condominium permissible upon any merger with any one of more such Phases may be calculated in accordance with paragraph 7.03 of this Declaration, based on said maximum and minimum square footages]. The Declarant covenants that it will not merge this Condominium with any additional Phase or Phases without the prior approval of the VA Administrator, if the plan for each such additional Phase or Phases is not consistent with the overall plan therefor previously approved by the VA Administrator.

(c) Filing in the Land Court by the Developer of an amendment to each of the Declarations referred to in clauses (a) and (b) above denominated as a "Certificate of Merger". This certificate shall contain:

(1) A certification by the Declarant, for the Condominium and each such Phase, that the Condominium and each such additional Phase have been substantially completed, that notices of completion therefor have been filed, that the respective periods for filing of mechanics' and materialmen's liens have expired, and that there are no such liens; and that the plan for each such additional Phase or Phases being merged with this Condominium is consistent with the overall plan, or if not, that the plan for such additional Phase has been approved by the VA Administrator.

(2) The revised common interest of each apartment in the merged condominium after completion of the merger, calculated in accordance with paragraph 7.03 (if the Condominium is merged with Phases II and III and said Phases are built in

accordance with the overall plan, the common interests after merger of the apartments in this Condominium shall be as set forth in said Exhibit "C"); and

(3) A revised site plan denominated as an amendment to each Condominium Map referred to in clauses (a) and (b) above showing the relative location of the buildings of the merged condominiums after completion of the merger.

19.03 Consequence of Merger. From and after the date of the filing of record of the said Certificate of Merger with respect to any additional Phase or Phases, the following consequences shall ensue:

(a) Use of Common Elements. The apartments in each of the merged condominiums shall have the right to use the common elements in all such condominiums to the same extent and subject to the same limitations as are imposed upon an apartment in each condominium just as though the merged condominiums had been developed as a single project.

(b) Common Interest. Each apartment in the merged condominiums shall have appurtenant thereto the common interest in the common elements of all the merged condominiums equal the common interest set forth for such apartment in the Certificate of Merger.

(c) Administration. There shall be only one Association and Board for the merged condominiums. A new Board shall be elected by all Apartment Owners by a special meeting of the single Association, notice of which meeting shall be given within 30 days following the merger. The new Board shall be elected in accordance with the By-Laws, as if that meeting were the first annual meeting of the Association. The financial affairs of each of the condominiums being merged shall be administered together, except that apartments in any one merged condominium shall not be assessed nor shall they have any obligation with respect to debts or obligations of the other condominium existing at or accrued prior to the effective date of the merger; and any long-term funds accumulated prior to any merger for the purpose of major repairs and replacements in any one condominium shall remain intact in a separate account or otherwise isolated and identified and shall be expended solely for such purposes before funds from any other source are so expended. However, the Board, in its reasonable discretion, shall specifically determine whether such funds (together, if appropriate, with future uniform contributions [to] be collected from Apartment Owners in and for the benefit of all merged condominiums) are or will be adequate for reasonably foreseeable items of major repair and replacement, and, if not, to make such specific assessments or other adjustments as are appropriate, to diminish the possibility that the Apartment Owners in any one condominium may later be subjected to assessments for such repairs and replacements in the other merged condominiums attributable to depreciation occurring prior to such merger. For this purpose, the Board may engage a construction consultant or other expert

to advise the Board on the extent of any depreciation and the projected time and costs for such repair and replacement that may be reasonably anticipated. The determination (and any special assessments and other adjustments) once made by the Board pursuant to this paragraph shall be final and binding on each Apartment Owner in the merged condominiums and not subject to further change thereafter pursuant to this paragraph, except in the case of a clear and convincing abuse of discretion.

(d) Governing Documents and Their Interpretation. For all other purposes, each of the merged condominiums shall be treated as part of a single project developed as a whole from the beginning. The Declaration of Condominium Property Regime and By-Laws applicable to each merged condominium shall be construed as "a single set of governing documents" applicable to the entire merged condominium, except to the extent expressly otherwise provided for therein. To provide a single set of documents after completion of any merger, the Declarant shall have the irrevocable right (but not the obligation) at any time not later than 30 days after the last of such mergers, but not later than December 31, 1992, to amend the Declarations and By-Laws for each merged condominium in its entirety so that there shall be one revised Declaration and By-Laws applicable to all such merged condominiums showing a consolidated description of the land, buildings, apartments, common elements, limited common elements and common interests, without otherwise changing the form or content of such Declarations and By-Laws, except for amendments required by law, and except that after the last merger of Phases, the amended Declaration may omit all or parts of this Paragraph 19 (and other provisions containing reservations of rights by the Declarant), and the name of the merged condominiums shall be "THE CLIFFSIDE VILLAGES AT WAIPIO" without references to "Phase I", "Phase II", and so on. Upon the filing of such a revised Declaration and By-Laws in the Land Court, the Declarant shall provide a copy of such amended Declaration and By-Laws to the Managing Agent for the merged condominiums and each Apartment Owner at his or her last-known address by certified mail. If more than one person owns an apartment, mailing of the amended Declaration and By-Laws to one of the Owners shall be sufficient.

19.04 Other Reserved Rights of the Declarant. In connection with such phased development and merger of Phases, the Declarant also reserves the following rights:

(a) Consolidation and Resubdivision. In connection with each merger or mergers, the Declarant reserves the right until December 31, 1992, to consolidate the Land with the land on which each such other Phase is located in order to constitute all of such real property as a single legal lot.

(b) VA/FHA Project Qualification; Regulatory Agreement. The Declarant intends to obtain the approval of the Condominium by the VA Administrator so that loans secured by mortgages of apartments in the Condominium might be guaranteed through the VA Home Loan Guarantee Program. The federal Housing and Rural Development Act



requires reciprocity for housing subdivision approvals issued by VA and the federal Department of Housing and Urban Development (the "FHA"). Thus, if VA certification for the Condominium is obtained, loans secured by mortgages on apartments in the Condominium might also qualify for mortgage insurance through FHA. Nevertheless, to assure that loans made by mortgages on apartments in the Condominium, both before and after each such merger, will qualify for mortgage insurance or guarantees by FHA and VA, the Declarant reserves the right, both before and after each such merger, to amend this Declaration to satisfy VA requirements, and, if necessary or convenient in the judgment of the Declarant, to satisfy and separate FHA requirements so that such loans might be so made, guaranteed or insured. Without limiting the generality of the foregoing, the Declarant, on behalf of the Association, may execute and record as an amendment to the Declaration a Regulatory Agreement in form and substance meeting FHA requirements and substantially identical to the form of Regulatory Agreement attached hereto as Exhibit "E" and by this reference made a part hereof. This right to amend the Declaration and By-Laws, including the right to execute and record such a Regulatory Agreement, shall apply to the Condominium Declaration and By-Laws of this Condominium both before and after any merger or mergers with other condominiums, as provided for in this paragraph 19. The Developer reserves this right until December 31, 1992.

(c) Changes to and Use of the Common Elements. In connection with, and only to the extent necessary for the creation of apartments and common elements in any such additional Phases, the Developer shall have the right up to December 31, 1992, to: (i) make changes in the Condominium, both before and after each such merger, to remove, amend or add common elements; to remove, amend or add parking spaces; (ii) enter upon the Condominium with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing said additional Phases according to plans and specifications (or amended plans and specifications) approved by the officer of the City and County of Honolulu having jurisdiction over the issuance of building permits; (iii) connect the said additional apartments and common elements in Phases II, or III to utilities of the Condominium; and (iv) file amendments to the Declaration for purposes of certifying condominium maps filed as reflecting the improvements shown therein to be "as built". In addition to the right reserved in paragraph 6.06, such rights shall include the following:

(1) An easement over, under and across the common elements of the Condominium for the purposes of performing all work connected with or incidental to the development and construction in any undeveloped portions of the additional Phases;

(2) The right appurtenant to the undeveloped Phases, in the nature of an easement over and upon the Condominium and any developed Phases to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development and construction of such undeveloped Phases;

Provided, however: (a) that before commencing any such work the Declarant shall first purchase, at its expense, a general liability insurance policy in an amount not less than \$1,000,000 for each occurrence, to cover any liability which Owners are exposed to as a result of such development and construction; and that such activities shall not cause any interruption, other than a temporary interruption, in the service of utilities to the Condominium; (b) that the Declarant, all of the Declarant's contractors and their respective agents shall use reasonable efforts, consistent with maintaining the progress of such activities, to minimize the interference with the Apartment Owners' use and enjoyment of the Condominium; and (c) the Developer shall not permit any lien, encumbrance or charge upon the Condominium, or any part thereof, in connection with such work, and, without limiting the generality of the foregoing, the Developer Shall require that the Developer's contractor or contractors performing such work (i) disclaim, release and waive its or their mechanic's and materialmen's and all other liens, charges, and claims as against the Condominium and every part thereof, (ii) agree to indemnify against any such lien, charge or claim of its or their subcontractors and suppliers, and (iii) post payment and performance bonds covering such work, and the Developer shall also require the Developer's contractor or contractors (iv) to agree to include in its or their contracts with subcontractors and suppliers similar disclaimers, releases and waivers and indemnities. (See endnote 9)

(d) Declaration for Joint Use. The Declarant reserves the right until December 31, 1992 to subject the Land and the Condominium to a Declaration for Joint Use by executing (together with others) and recording a document substantially similar to the form of Declaration for Joint Use attached hereto as Exhibit "F" and by this reference made a part hereof. (See endnote 9)

19.05 Additional Provisions. Each and every Owner or other person and entity acquiring an interest in the Condominium, by such acquisition, consents to the reserved rights of Declarant as stated in this paragraph 19, and further consents to such phased development, to such merger or mergers of phases, to such consolidation and resubdivision, and to such amendment or amendments of this Declaration, the By-Laws and the Condominium Map to effect the same; and agrees to execute such documents and to do such other things as may be necessary or convenient to effect the same and appoints the Declarant, with right of substitution, as his or her attorney-in-fact to execute such documents and do such things on his or her behalf, which grant of such power being coupled with an interest, is irrevocable until December 31, 1992 and as such shall not be affected by disability or death of such party. Each and every person also acknowledges and accepts that such phased development and construction may continue on the Land, as well as on adjacent land, after he or she has taken occupancy in the Condominium, that such activities may result in noise, dust or other annoyances to him or her, and waives any rights, claims, or actions he or she may acquire against the Declarant, its contractors or its respective agents, as a result of such activities. The rights reserved by the Declarant under this paragraph 19 shall inure to the benefit of the Declarant, and its successor and

the assigns of such rights; and without limiting the generality thereof, such rights shall inure to the benefit of the Declarant's mortgage lender for not only for the Condominium, but also any of the land referred to in said Exhibit "D" (or any development thereof), and to any successor or assign of every such lender, and to any person acquiring any portion of the Condominium or such other land or development in the course of any foreclosure or other legal proceedings or in the exercise of mortgage remedies by assignment in lieu of foreclosure.

If any one or more of the provisions of this Paragraph 19 shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Paragraph 19 and shall in no way affect the enforceability of any other provision hereof.

20. Certificates of Title. Upon the issuance of a separate certificate of title for any apartment, the Declarant shall take possession of the "Owner's duplicate certificate" as Owner's "attorney duly authorized" (as those terms are used in Section 501-75 (H.R.S.)), and Declarant shall retain possession thereof until delivery of possession of the apartment to the purchaser; thereupon, Declarant shall deposit such certificates with the Board through the Managing Agent, who shall thereupon become Owner's "attorney duly authorized" and shall keep all Owners' duplicate certificates in a safe place; provided that (a) the Declarant or the Board and the Managing Agent shall surrender or make available the Owner's duplicate certificate upon request from the Owner thereof for the purpose of having any conveyance or encumbrance noted thereon, on condition that such Owner's duplicate certificate, or any Owner's duplicate certificate issued in the place thereof, shall be redelivered to the Declarant or the Board of Directors promptly after any necessary processing in the Land Court, (b) the Declarant or the Board may deliver any Owner's duplicate certificate covering any apartment to any first mortgagee of such apartment which may require that it have possession of the Owner's duplicate certificate, on condition that such mortgagee shall promptly surrender such Owner's duplicate certificate to the Declarant or the Board, without further instruction or authorization from the Owner, if presentation of such Owner's duplicate certificate shall be required by the Declarant or the Board of Directors in order to permit amendment to the Declaration, the By-Laws, or the Condominium Map, the designation of any easement, the filing of any grant of easement, or the filing of any other instrument authorized hereunder, or to the apartment deed to the Owner's apartment, and (c) the Declarant or the Board, without further authorization from the Owner, or any mortgagee, may (and shall at the request of the Declarant) present such Owner's duplicate certificate of title to the Land Court whenever it may be appropriate to note thereon the filing of an amendment to the Declaration, the By-Laws, or the Condominium Map, or any designation or grant of easement authorized hereunder, or under the Apartment Deed to the Owner's apartment or the filing of any other document incident to the exercise of any right reserved to the Declarant hereunder or under any such document.

21. Gentry-Waipio Community Area Association. Each Apartment Owner, upon acquiring his or her apartment shall become a member of the Century-Waipio Community Area Association, a non-profit Hawaii corporation, which is separate from the Association. All Apartment Owners and other persons and entities acquiring any right, title or interest in the Condominium, including contract purchasers, are subject to, bound by, and shall comply strictly with the provisions of the Master Declaration and the Charter of Incorporation and By-Laws of the Gentry-Waipio Community, Area Association, as they have been or may be supplemented from time to time, and all rules and regulations which may lawfully be promulgated thereunder. Pursuant to the Master Declaration, the Community Area Association is authorized to assess a maintenance assessment to cover expenses incurred by said Community Area Association in providing for the maintenance, restoration and repair of any improvements located on the common areas, among other things, as more fully set forth in the Master Declaration. All assessments made by the Community Area Association shall be separate and distinct from assessments for the Condominium.

22. Latent Defects. So long as the Declarant and its successors and assigns (other than purchasers of apartments in the Condominium) owns one or more of the apartments, Declarant, for itself and such successors and assigns, agrees to take no action which would adversely affect the rights of the Association or Apartment Owners with respect to any assurances made by third parties against latent defects in the Condominium or other rights assigned to the Association, if any, by reason of the establishment of this Condominium.

23. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

24. Amendment. Except as otherwise expressly provided herein or in the Condominium Act, this Declaration may be amended by the vote or written consent of at least seventy-five percent (75%) of the Apartment Owners, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association. Each such amendment shall be effective upon filing in said Land Court. However, at any time prior to the first recording in said Land Court transfer of an apartment (or any interest therein) to a party not a signatory hereto, the Declarant may amend this Declaration (including all exhibits) and the Condominium By-Laws in any manner, without the consent of any apartment purchaser. Notwithstanding the lease, sale or conveyance of any of the apartments, the Declarant may amend this Declaration (and when applicable, the Condominium Map) to file the "As-Built Certificate" required by Section 514A-12 of the Condominium Act: (1) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plan thereto filed fully

and accurately depicts layout, location, apartment numbers, and the dimensions of the apartments as built; or (2) so long as the plans filed therewith involve only immaterial changes to the layout, location, or dimensions of the apartments as built or any change in any apartment number. Paragraphs 6.05, 6.06, 6.07, 6.08, 8.02, 19 and 20 may not be amended without the prior written consent of the Declarant, notwithstanding that one hundred percent (100%) of the Apartment Owners may vote therefor. In case of a modification or amendment to the Condominium By-Laws, this Declaration shall be amended to set forth such modification or amendment pursuant to such percentage vote as required by the Condominium By-Laws which rendered the modification or amendment thereof effective. (See endnote 14)

IN WITNESS WHEREOF, the undersigned have executed this instrument  
on this 28th day of September, 2000.

ASSOCIATION OF APARTMENT OWNERS  
OF THE CLIFFSIDE VILLAGES AT WAIPIO,  
INC.

By [Signature]  
Its President

By [Signature]  
Its VICE PRESIDENT



STATE OF HAWAII

COUNTY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 28th day of September, 2000, before me appeared Bryan Clyman, to me personally known, who being by me duly sworn, did say that he/she is the President of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC., an incorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said Office acknowledged that he/she executed said instrument as his/her free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC.

Notary Public, State of Hawaii

Print Name: Doni A. Floerke-Politsch

My commission expires: 7/19/01

STATE OF HAWAII

COUNTY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 28th day of September, 2000, before me appeared David S. Midden, to me personally known, who being by me duly sworn, did say that he/she is the President of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC., an incorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said Office acknowledged that he/she executed said instrument as his/her free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC.

Notary Public, State of Hawaii

Print Name: Doni A. Floerke-Politsch

My commission expires: 7/19/01

## ENDNOTES

The following endnotes correspond to provisions in the Declaration of Horizontal Property Regime of Cliffside Villages at Waipio, as restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the project's declaration. This restatement is made solely for purposes of information and convenience. The restated declaration of condominium property regime correctly states without change the corresponding provisions of the original declarations, as amended, and supersedes the original declarations and all prior amendments to them. In the event of a conflict, however, the restated declaration shall be subordinate to the original declarations, amendments and cited statutes.

1. Throughout this restatement, references to "horizontal" property regime and "horizontal" property act have been changed by substituting "condominium" for "horizontal" in accordance with Act 65 (SLH 1988).

2. Cliffside Villages at Waipio was developed in three phases, Phases I, II, and III, pursuant to Declarations of Horizontal Property Regime all dated January 14, 1988, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525757, 1541100, and 1546776, and Condominium Maps 654, 661, and 666. The three phases also had separate By-Laws dated January 14, 1988, which were filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525758, 1541101 and 1546777. Subsequently, the three phases of the project and their governing documents were merged into a single condominium project, "The Cliffside Villages at Waipio", governed by a single association, by a Certificate of Merger dated June 13, 1989 and recorded as Document No. 1643985 (referred to below as the Certificate of Merger). Subsequently, the Association of Apartment Owners of the Cliffside Villages at Waipio filed Articles of Incorporation dated May 12, 1995, thereby changing its official name to "Association of Apartment Owners of the Cliffside Villages at Waipio, Inc."

3. Section 19.01 of each declaration allowed the developer to merge the three projects into one project, and Section 19.03(d) of each declaration allowed the developer to draft a single declaration and bylaws for the merged project. The developer did merge the three projects by means of the Certificate of Merger (see above) but did not draft a single set of governing documents. Nevertheless, the three sets of governing documents are essentially the same, except for descriptions of apartments, common and limited common elements and percentages of common interests. This restatement, in effect, merges the three declarations into a single declaration.

4. As a result of the merger of the three phases, the land described in exhibit A of this restated declaration is the land described in the three separate exhibit A's of the three original declarations.

5. Paragraph 3. of the certificate of merger included an amendment to each of the three original condominium maps (Nos. 654, 661, and 666), to show the relative location of the buildings of the merged project following the completion of the merger. In addition, as a result of the merger of the three phases, the limited common elements described in the exhibit B of this restated declaration are the limited common elements described in the three separate exhibit B's of the three original declarations. Sheet A-1 of Sheet 1 of Condominium Map No. 654 was subsequently amended by a document dated March 25, 1998 and recorded as Land Court Document No. 2450532.

6. As a result of the merger, the project is comprised of 184 apartment units.

7. As a result of the merger of the three phases, the limited common elements described in the exhibit B of this restated declaration are the limited common elements described in the three exhibit B's of the three original declarations.

8. Section 2 and Schedule 1 of the Certificate of Merger revised Exhibit C to re-apportion the common interests of the apartments of the three merged projects to reflect the merger. The revised Exhibit C is attached. The land described in Exhibit D is now described in Exhibit A, so Exhibit D is omitted.

9. The "Declaration for Joint Use" was attached as Exhibit F to the Phase I declaration and subsequently recorded as Land Court Document No. 1539193, dated March 22, 1988. The FHA Regulatory Agreement was attached as Exhibit E to each of the three original declarations.

10. Section 10.04(d) must be read subject to the requirements of the Fair Housing Amendments Act, as amended (42 U.S.C. Section 3601, et seq.), and Chapter 515, Hawaii Revised Statutes, permitting alterations by disabled owners and residents to the extent necessary to allow them the reasonable use of the common elements and apartments. As a result, disabled owners and residents will be permitted to make all alterations and additions to their apartment and the project authorized by the Fair Housing Amendments Act and Chapter 515, Hawaii Revised Statutes. Note that section 514A-16 has been amended to prohibit mechanics' and materialman's liens against the common elements, although such liens may still be filed against individual apartments and their respective common interests.

11. Act 39 (SLH Hawaii 2000), effective April 26, 2000, allows an association to collect up to six months of maintenance fees from a purchaser of a foreclosure apartment.

12. Section 14. has also been amended to reference the budgeting and reserve requirements of Chapter 514A stated in Section 514A-83.6, Hawaii Revised Statutes.

13. The three phases described in section 19 were subsequently merged into a single project (see endnotes 2 and 3 above). Nevertheless, since a single set of

documents was not drafted by the developer, the wording of the Phase I declaration has been retained here. Section 19 of the declarations of Phase II and III have essentially the same wording. Each original declaration should be consulted for the exact wording. Note that the reference to lot 11924 in line three of Section 19.01 of the Phase I declaration appears to be a misprint. The correct number should apparently be 11922.

14. Section 24 of the Declaration was amended to include the change made to Section 514A-11 permitting amendments to the declaration be made by written consent, without a meeting, as well as by a vote at a meeting. Note that pursuant to this section, the developer did record amendments to the declarations of Phases I, II, and III to record "as-built" statements for each project. The amendments for Phases I, II, and III are recorded as Land Court Document Nos. 1621530, 1621607, and 1621531, respectively.

EXHIBIT "A"

THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE I

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii described as follows:

Lot 11919, area 144,060 square feet, as shown on Map No. 697, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John Ii Estate, Limited.

Being all of the lands described in Transfer Certificate of Title No. 304,496.

Subject, however, to the following encumbrances:

1. Unilateral Agreement and Declaration of Conditional Zoning dated August 26, 1977, filed as Document No. 832326.
2. Declaration of Covenants, Conditions and Restrictions dated November 17, 1978, filed as Land Court Document No. 909239, as amended by instruments dated November 17, 1980, filed as Document No. 1042710; dated December 15, 1983, filed as Document No. 1208195; dated January 9, 1984, filed as Document No. 1233261; dated July 1, 1984, filed as Document No. 1247312; dated October 1, 1984, filed as Document No. 1257511; and dated December 18, 1984, filed as Document No. 1273254 (the "Master Declaration").
3. Reservation set forth in Deed dated May 1, 1984, filed as Document No. 1233280.
4. Agreement dated April 30, 1984, filed as Document No. 1233281.
5. Agreement For Issuance of Conditional Use Permit Under Section 4.40-17 of the Land Use Ordinance (LUO) effective as of February 19, 1987 by James K. Schuler and Associates, Inc., as Declarant, filed as Land Court Document No. 1504236.
6. Easement 4634, 5,869 square feet, as shown on Map No. 697, as set forth by Land Court Order No. 86993, filed September 2, 1987.
7. Easement 4635, 3,488 square feet, as shown on Map No. 697, as set forth by Land Court Order No. 86993, filed September 2, 1987.
8. Easement 4636, 663 square feet, as shown on Map No. 697, as set forth by Land Court Order No. 86993, filed September 2, 1987.



EXHIBIT "A"

THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE II

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii described as follows:

Lot 11920, area 197,339 square feet, as shown on Map No. 697, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John Ii Estate, Limited.

Being all of the lands described in Transfer Certificate of Title No. 304,497.

Subject, however, to the following encumbrances:

1. Unilateral Agreement and Declaration of Conditional Zoning dated August 26, 1977, filed as Document No. 832326.
2. Declaration of Covenants, Conditions and Restrictions dated November 17, 1978, filed as Land Court Document No. 909239, as amended by instruments dated November 17, 1980, filed as Document No. 1042252; and Annexation instrument dated November 4, 1980, filed as Document No. 1042710 (the "Master Declaration").
3. Reservation set forth in Deed dated May 1, 1984, filed as Document No. 1233280.
4. Agreement dated April 30, 1984, filed as Document No. 1233281.
5. Agreement For Issuance of Conditional Use Permit Under Section 4.40-17 of the Land Use Ordinance (LUO) effective as of February 19, 1987 by James K. Schuler and Associates, Inc., as Declarant, filed as Land Court Document No. 1504236.
6. Easement 4634, 4638, 4639, 4641 and 4646 as shown on Map No. 697.
7. Grant in favor of Hawaiian Electric Company, Inc. and Hawaiian Telephone Company, dated December 17, 1987, filed as Document No. 1522935; granting a perpetual right and easement to construct, reconstruct, operate, maintain, repair and remove pull boxes, hand holes, transformer vaults and underground power lines, etc., for the transmission and distribution of electricity.
8. Declaration for Joint Use dated March 22, 1988, filed as Land Court Document No. 1539193.

EXHIBIT "A"

THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE III

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii described as follows:

Lot 11921, area 15,712 square feet, and Lot 11922, area 241,936 square feet, as shown on Map No. 697, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John Ii Estate, Limited.

Being all of the lands described in Transfer Certificate of Title No. 304,498.

Subject, however, to the following encumbrances:

1. Unilateral Agreement and Declaration of Conditional Zoning dated August 26, 1977, filed as Document No. 832326.
2. Declaration of Covenants, Conditions and Restrictions dated November 17, 1978, filed as Land Court Document No. 909239, as amended by instruments dated November 17, 1980, filed as Document No. 1042252; and Annexation instrument dated November 4, 1980, filed as Document No. 1042710 (the "Master Declaration").
3. Reservation set forth in Deed dated May 1, 1984, filed as Document No. 1233280.
4. Agreement dated April 30, 1984, filed as Document No. 1233281.
5. Declaration for Joint Use dated March 22, 1988, filed as Land Court Document No. 1539193.
6. As to Lot 11921 only:
  - a. Easements 4639 and 4640 as shown on Map No. 697.
7. As to Lot 11922 only:
  - a. Easements 2787 and 2788, as shown on Map 506, as set forth by Land Court Order No. 51748, filed November 17, 1978.
  - b. Grant in favor of Hawaiian Electric Company, Inc., dated January 17, 1979, filed as Document No. 925685, granting easement across Easements 2787 and 2788.
  - c. Easement 3154, as shown on Maps 547 and 635, as set forth by Land Court

Order No. 56212, filed 7, 1980.

- d. Restriction of vehicle access along Interstate Highway F.A.P. I-H2-1 (3) as shown on Map 635.
- e. Easements 4639, 4641, 4642, 4643, 4644, 4645, and 4646 as shown on Map No. 697.

EXHIBIT "A" ENDS

## EXHIBIT "B"

### DESCRIPTION OF CONDOMINIUM

#### THE CLIFFSIDE VILLAGES AT WAIPIO - PHASES I, II, & III

The Condominium Phase I contains: fifty-six (56) apartment units located in 6 two-story wood framed buildings, without basements, letter "A" through "F". All buildings are built basically of concrete, wood, glass and allied building materials. There are 72 uncovered on-grade parking stalls located near the buildings. At least one parking stall will be assigned to each apartment. Seven (7) stalls will be set aside for visitors.

The Condominium Phase II contains: sixty (60) apartment units located in 6 two story wood framed buildings, without basements, lettered "G" thru "L". All buildings are built basically of concrete, wood, glass and allied building materials. There are 77 uncovered on-grade parking stalls located near the buildings. At least one parking stall will be assigned to each apartment. Eleven stalls will be set aside for visitors.

The Condominium Phase III contains: sixty-eight (68) apartment units located in 7 two-story wood framed buildings, without basements, lettered "M" thru "S". All buildings are built basically of concrete, wood, glass and allied building materials. There are 95 uncovered on-grade parking stalls located near the buildings. At least one parking stall will be assigned to each apartment. Fifteen stalls will be set aside for visitors.

Phase I Apartment Unit Types. There are 24 Type A units and 32 Type B units. Both types are one story units. They A Units are further divided into three types depending on the size of the lanai. The Type B units are further divided into two types depending on whether they are on the first or second story (the second story units have a larger lanai). There are a 5 different types of buildings. Building "A" contains 8 Type A and 4 Type B apartments; Building "B" contains 8 Type B apartments; Building "C" contains 12 Type B apartments; Building "D" contains 4 Type B apartments; Building "E" contains 8 Type A and 4 Type B apartments; and Building "F" contains 8 type A apartments.

Phase II Apartment Unit Types. There are 32 Type A-1 units and 28 Type B units. Both types are one story units. The Type B units are further divided into two types depending on whether they are on the first or second story (the second story units have a larger lanai). There are 3 different types of buildings. Buildings "G", "J" and "K" each contain 8 Type A-1 and 4 Type B apartments; Building "H" and "L" contain 4 Type A-1 apartments and 4 Type B apartments; and Building "I" contains 8 Type B apartments.

Phase III Apartment Unit Types. There are 20 Type A-1 units and 48 Type B

units. Both types are one story units. The Type B units are further divided into two types depending on whether they are on the first or second story (the second story units have a larger lanai). There are 4 different types of buildings. Building "M" contains 4 Type A-1 and 4 Type B apartment; Buildings "N", "O" and "S" each contain 12 Type B apartments; Buildings "P" and "Q" contain 8 Type A-1 apartments; and Building "R" contains 8 Type B apartments.

Each unit type and subtype is further described as follows:

(a) Type A-1 (Phases I, II, and III): One-story units on the first and second floors containing 2 bedrooms, 1-1/2 bathrooms, living/dining room, a kitchen, a hallway and a lanai. Each A apartment will contain 750 square feet, more or less, plus a lanai of approximately 75 square feet. The configuration of some of these units is the reverse or mirror image of other units of this type. There are 68 apartments of this type.

(b) Type A-2 (Phase I): These units are the same as Type A-1, except the main entry into the living room is located differently. They have two lanais of approximately 120 square feet. The configuration of some of these units is the reverse or mirror image of other units of this type. There are 4 apartments of this type, all located on the first floor.

(c) Type A-3 (Phase I): These units are also the same as Type A-1 except they have one lanai of approximately 95 square feet, and the main entry into the living room is located differently. The configuration of some of these units is the reverse or mirror image of other units of this type. There are 4 apartment of this type, all located on the second floor.

(d) Type B-1 (Phases I, II, and III): One-story units on the first floor containing 2 bedrooms, 2 bathrooms, a living/dining room, a kitchen, a hall entryway and a lanai. Each B-1 apartment will contain 742 square feet, more or less, plus a lanai of approximately 50 square feet. The configuration of some of these units is the reverse or mirror image of other units of this type. There are 42 apartments of this type.

(e) Type B-2 (Phases I, II, and III): One-story units on the second floor containing 2 bedrooms, 2 bathrooms, a living/dining room, a kitchen, a hall entryway and a lanai. B-2 units are the same as the B-1 units, except they have larger lanais. Each B-2 apartment will contain 742 square feet, more or less, plus a lanai of approximately 70 square feet. The configuration of some of these units is the reverse or mirror image of other units of this type. There are 66 apartments of this type.

Each apartment includes carpeting (except in the kitchen and bathroom or rooms which will be sheet vinyl), drapes, refrigerator, range and oven with hood, garbage disposal, a dishwasher, a washer/dryer and a water heater. The water heater for each unit is located outside of that unit on the first floor level in an exterior compartment. Each compartment contains 2 (or 4) water heaters, 1 (or 2) for the first floor



apartment(s) and 1 (or 2 ) for the second floor apartment(s) above the first floor unit(s). The water heater for each apartment (including related piping serving only that unit) is apart of that apartment, even if it is located outside of the perimeter of the unit.

Apartment Numbers and Access. Each apartment is identified by a letter followed by a three-digit number. The letter identifies the building in which the apartment is located, the first digit indicates the floor on which the apartment is located, and the last two digits indicate that apartment's relative location on a given floor, as follows: starting with the apartment in each building that is numbered "01" on the Condominium Map, the remaining apartments on that floor in that building are number in ascending order beginning with the digits "02". For one example, apartment A-102 is located in Building "A", it is on the first floor of that building, and it is located on that floor in that building next to apartment number A-101. All first floor apartments have direct access to the grounds. The second floor Type A and B units have access to the grounds via a wooden landing and stairway. In some cases the stairway services that apartment only and in other cases services two apartments.

Limited Common Elements. The limited common elements and the apartments to which they are appurtenant are as follows:

(a) Each apartment has appurtenant to it at least one parking stall. The Condominium Map identifies each stall by a number from 1 through 244. The particular apartment stall appurtenant to a particular apartment is listed on the attached schedule. [NOTE: The stalls listed on the attached schedule as "visitor" stalls will remain common elements. All other stalls may be transferred between apartments as provided in paragraph 8.02 of the Condominium Declaration. Without limiting the generality of said paragraph 8.02, the Declarant may transfer one or more of the stalls listed as appurtenant to other apartments upon the original conveyance thereof to a purchaser.]

(b) Each private patio or yard area is a limited common element to first floor apartments adjoining such area, as shown on the site plan in the Condominium Map, as is the interior surface (i.e., the surface facing that apartment) of the fence around each such area.

(c) Each compartment designed to contain hot water heaters and located on the exterior of the buildings are limited common elements to the apartments served by the hot water heaters located in that compartment.

(d) Each concrete pad (other than a lanai) outside the entry door of an apartment located on the first level is a limited common element appurtenant to that apartment. Each exterior stairway, landing and entry lanai providing access to a second level apartment is a limited common element appurtenant to that apartment; provided, that those stairways and landings which lead to two second level apartments shall be limited common elements to both those apartments, but the second story entry lanai adjacent to the entrance to each such apartment is a limited common element to that

apartment only.

(e) The mailbox bearing the same designation as the apartment is a limited common element to that apartment.

# THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE I

## PARKING SCHEDULE

<u>Apartment No.</u>	<u>Stall No.</u>	<u>Apartment No.</u>	<u>Stall No.</u>
A-101	2	D-101	42
A-102	18	D-102	39, 41
A-103	3		
A-104	6	D-201	43
A-105	10	D-202	40
A-106	11		
A-201	1	E-101	52
A-202	17	E-102	51
A-203	4	E-103	57
A-204	5	E-104	58
A-205	9	E-105	60
A-206	12	E-106	62
B-101	19, 21	E-201	53
B-102	22	E-202	50
B-103	25	E-203	55
B-104	13, 26	E-204	56
		E-205	59
		E-206	61
B-201	15, 20	F-101	65
B-202	23	F-102	63
B-203	24	F-103	72
B-204	14, 27	F-104	70
C-101	28, 48	F-201	66
C-102	46	F-202	64
C-103	32	F-203	71
C-104	33	F-204	69
C-105	36		
C-106	37, 44		
C-201	29, 47	Visitor Stalls:	
C-202	30	7, 8, 16, 49, 54, 67, and 68	
C-203	31		
C-204	34		
C-205	35		
C-206	38, 45		

THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE II  
PARKING SCHEDULE

<u>Apartment No.</u>	<u>Stall No.</u>	<u>Apartment No.</u>	<u>Stall No.</u>
G-101	87	J-201	117
G-102	85	J-202	115
G-103	90	J-203	120
G-104	89	J-204	121
G-105	94	J-205	148
G-106	96	J-206	122
G-201	88	K-101	126
G-202	86	K-102	124
G-203	91	K-103	131
G-204	92	K-104	132
G-205	93	K-105	135
G-206	95	K-106	134
H-101	75	K-201	127
H-102	73	K-202	125
H-103	78	K-203	129
H-104	79, 80	K-204	130
		K-205	136
		K-206	133
H-201	76	L-101	138
H-202	74	L-102	137
H-203	77	L-103	142
H-204	81, 82	L-104	144
I-101	102, 103	L-201	139
I-102	111	L-202	140
I-103	104	L-203	143
I-104	106, 113	L-204	145
I-201	100, 101	Visitor Stalls:	
I-202	110	83, 84, 97, 98, 99, 107, 108,	
I-203	109	128, 141, 146, 147	
I-204	105, 112		
J-101	116		
J-102	114		
J-103	118		
J-104	119		
J-105	149		
J-106	123		

**THE CLIFFSIDE VILLAGES AT WAIPIO - PHASE III**  
**PARKING SCHEDULE**

<u>Apartment No.</u>	<u>Stall No.</u>	<u>Apartment No.</u>	<u>Stall No.</u>
M-101	157	Q-101	198
M-102	158	Q-102	194
M-103	150	Q-103	218
M-104	155	Q-104	191
M-201	153	Q-201	193
M-202	154	Q-202	196
M-203	151	Q-203	219
M-204	156	Q-204	192
N-101	161, 162	R-101	223
N-102	213	R-102	224
N-103	164	R-103	226
N-104	165	R-104	227
N-105	168		
N-106	169, 170	R-201	222
		R-202	221
N-201	159, 160	R-203	225
N-202	212	R-204	228
N-203	163		
N-204	166	S-101	231,232
N-205	167	S-102	233
N-206	171, 172	S-103	236
		S-104	237
		S-105	240
O-101	175, 176	S-106	241,242
O-102	177		
O-103	180	S-201	229,230
O-104	181	S-202	234
O-105	184	S-203	235
O-106	185, 186	S-204	238
		S-205	239
O-201	173, 174	S-206	243, 244
O-202	178		
O-203	179		
O-204	182		
O-205	183		
O-206	187, 188		
P-101	201		
P-102	199		
P-103	197		
P-104	189		
P-201	202		
P-202	200		
P-203	195		
P-204	190		

**Visitor Stalls:**  
152, 203, 204, 205, 206, 207, 208,  
209, 210, 211, 214, 215, 216, 127  
and 220



**EXHIBIT C**  
**THE CLIFFSIDE VILLAGES AT WAIPIO**  
**COMMON INTEREST**

The Condominium Declaration states that the undivided Interest in the common elements, called the "common Interest", belonging to each apartment for voting and all other purposes are as follows:

<u>TYPE AND NUMBER OF APARTMENTS</u>	<u>APARTMENT NUMBERS</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST FOR EACH APARTMENT</u>	<u>TOTAL PERCENTAGE OF UNDIVIDED INTEREST FOR EACH APARTMENT</u>
A-1 (68):	E-101, E-102, E-105, E-106, F-101, F-102, F-103, F-104, E-201, E-202, E-205, E-206, F-201, F-202, F-203, F-204, G-101, G-102, G-105, G-106, H-101, H-102, J-101, J-102, J-105, J-106, K-101, K-102, K-105, K-106, L-103, L-104, G-201, G-202, G-205, G-206, H-201, H-202, J-201, J-202, J-205, J-206, K-201, K-202, K-205, K-206, L-203, L-204, M-101, M-102, P-101, P-102, P-103, P-104, Q-101, Q-102, Q-103, Q-104, M-201, M-202, P-201, P-202, P-203, P-204, Q-201, Q-202, Q-203, Q-204	.005510	0.37468
A-2 (4):	A-101, A-102, A-105, A-106	.005750	0.02300
A-3 (4):	A-201, A-202, A-205, A-206	.005605	0.02242

B-1 (42):	A-103, A-104, B-101, B-102, B-103, B-104, C-101, C-102, C103, C-104, C-105, C-106, D-101, D-102, E-103, E-104, G-103, G-104, H-103, H-104, I-101, I-102, I-103, I-104, J-103, J-104, K-103, K-104, L-101, L-102, M-103, M-104, R-101, R-102, R-103, R-104, S-101, S-102, S-103, S-104, S-105, S-106	.005290	0.22218
B-2 (66):	A-203, A-204, B-201, B-202, B-203, B-204, C-201, C-202, C-203, C-204, C-205, C-206, D-201, D-202, E-203, E-204, G-203, G-204, H-203, H-204, I-201, I-202, I-203, I-204, J-203, J-204, K-203, K-204, L-201, L-202, M-203, M-204, N-101, N-102, N-103, N-104, N-105, N-106, N-201, N-202, N-203, N-204, N-205, N-206, O-101, O-102, O-103, O-104, O-105, O-106, O-201, O-202, O-203, O-204, O-205, O-206, R-201, R-202, R-203, R-204, S-201, S-202, S-203, S-204, S-205, S-206	.005420	0.35772
Grand Total:			1.00000 equals 100.00%

Each apartment owner will be assessed a share, equal to the common interest of his or her apartment, of all common expenses of the Condominium, except all expenses of relating to limited common elements will be charged as noted in Exhibit B.

The common interest is based upon the net living area, plus lanai area, in square feet for that apartment divided by the total net living area, plus lanais, of all apartments, rounded off so the common interest for all apartments equals 100%.

**NOTE:** The Common interest for each apartment was changed upon the merger the three phases of this Condominium by the Certificate of Merger. (See endnotes 2, 3 and 4)

**Apt#**

O-101  
O-206  
A-101  
A-102  
A-103  
A-104  
A-202  
A-203  
A-204  
A-206  
B-204  
C-101  
C-102  
C-103  
C-104  
C-105  
C-106  
C-201  
C-202  
C-203  
C-204  
C-205  
D-101  
D-202  
E-102  
E-105  
E-201  
E-202  
E-203  
E-204

**TCT#**

377407  
415035  
508895  
347535  
346483  
506479  
408346  
532502  
399135  
385105  
475373  
478953  
470819  
393624  
332166  
479576  
434516  
399618  
512469  
437902  
401655  
476911  
393157  
332178  
366314  
517950  
485653  
332186  
380172  
371158

**Apt#**

E-205  
E-206  
F-103  
F-201  
F-202  
F-203  
G-101  
G-102  
G-103  
G-104  
G-201  
G-203  
G-204  
G-205  
H-102  
H-201  
H-204  
H103  
I-101  
I-102  
I-102  
I-103  
I-104  
I-201  
I-202  
I-203  
J-103  
J-104  
J-201

**TCT#**

430989  
516828  
443612  
561,098  
509004  
432219  
500055  
401722  
392787  
425312  
483227  
375459  
378794  
351975  
432551  
460345  
421157  
509195  
332219  
365139  
444062  
418330  
388637  
426880  
504151  
483455  
374013  
426134  
451815

**Apt#****TCT#**

J-202	371624
J-203	519227
K-101	455297
K-102	556,301
K-104	500867
K-105	376576
K-106	418328
K-202	486880
K-203	<u>395027</u>
K-204	418883
K205	486,611
L-101	490202
L-103	540481
L-202	458424
M-102	483859
M-103	502495
M-104	<u>479569</u>
M-201	390082
M-202	371773
N-102	435731
N-103	408903
N-104	528407
N-106	424608
N-201	438979
N-203	341274
N-204	487260
N-205	<u>332277</u>
J-102	332228
J-203	519,227
L-102	332758
N-201	438,979



**Apt#**

N-206  
O-102  
O-105  
O-106  
O-203  
O-204  
P-101  
P-103  
P-104  
P-201  
P-202  
P-204  
Q-102  
Q-103  
Q-201  
Q-202  
Q-204  
R-101  
R-102  
R-104  
R-201  
R-202  
R-203  
R-204  
S-102  
S-103  
S-104  
S-105  
S-106  
S-201  
S-203  
S-204  
S-205

**TCT#**

480345  
365193  
441115  
525668  
430973  
407060  
515795  
360569  
335641  
386575  
400249  
481263  
356015  
537938  
338564  
350782  
540672  
332307  
346937  
401334  
555,561  
501728  
444226  
404155  
472178  
461507  
397707  
477554  
448913  
353113  
393033  
524794  
376616