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DECLARATION OF COMMUNITY COVENANTS FOR KOA RIDGE

Declarant: CASTLE & COOKE HOMES HAWAII, INC.,
a Hawaii corporation
680 Iwilei Road, Suite 510
Honolulu, HI 96817

**DECLARATION OF COMMUNITY COVENANTS
FOR
KOA RIDGE**

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DECLARATION OF COMMUNITY COVENANTS
FOR
KOA RIDGE

Koa Ridge is a master-planned mixed-use development located at Waipio, on the Island of Oahu, in the City and County of Honolulu, Hawaii. This Declaration of Community Covenants for Koa Ridge (as may be amended and supplemented from time to time, this **“Declaration of Community Covenants”**) establishes a structure and a system of standards, procedures, and governance for the development, expansion, administration, maintenance, use, and enjoyment of Koa Ridge. Castle & Cooke Homes Hawaii, Inc., a Hawaii corporation, is the master developer of Koa Ridge and, along with its successors and assigns, is referred to as the **“Declarant.”**

The Koa Ridge Owners Association (the **“Owners Association”**) has been or shall be incorporated as a Hawaii nonprofit corporation to own, operate, and/or maintain various common areas and improvements within or benefitting Koa Ridge, to provide services that benefit all or portions of the Koa Ridge Community, and to administer and enforce the Koa Ridge Governing Documents (defined below), including this Declaration of Community Covenants.

DECLARATION OF COMMUNITY COVENANTS

This Declaration of Community Covenants creates rights and obligations that are binding upon and inure to the benefit of the Declarant, the Owners Association, and all present and future owners and occupants of property in Koa Ridge. By executing and recording this Declaration of Community Covenants, Declarant declares that the property described on Exhibit “A” (the **“Initial Property”**) and any additional property made subject to this Declaration of Community Covenants in the future by amendment or supplement shall constitute **“Koa Ridge”** or the **“Community”** as referred to in this Declaration of Community Covenants. The covenants, conditions, restrictions, and easements set forth in this Declaration of Community Covenants constitute covenants and equitable servitudes that shall run with the title to all portions of Koa Ridge, shall govern the development, maintenance, and use of such property, and shall be binding upon and benefit Declarant and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property, including Parcel Owners and Sub-Unit Owners as herein defined, and the respective heirs, personal representatives, successors, successors-in-title, and assigns of all such persons and entities. This Declaration of Community Covenants shall also be binding upon and benefit the Owners Association, its members, and its successors and assigns.

This document does not and is not intended to create a condominium or partnership under Hawaii law.

PART ONE: THE KOA RIDGE COMMUNITY

Chapter 1

Overview of Governing Documents and Definitions

1.1. Scope and Applicability

Koa Ridge is administered through various documents that have a legal and binding effect on all owners and occupants of property subject to this Declaration of Community Covenants, as well as on anyone else that now or in the future has an interest in any portion of the property comprising the Community. Such documents are referred to in this Declaration of Community Covenants as the “**Governing Documents**.” The Governing Documents consist of this Declaration of Community Covenants, Supplements, the Articles of Incorporation, the By-Laws, the Design Guidelines, the Rules, and Board Resolutions, each as more particularly described in this Declaration of Community Covenants, and each as may be amended, restated, and/or supplemented from time to time. All Parcel Owners and Sub-Unit Owners, as well as their tenants, guests, and invitees, are subject to and are required to comply with the Governing Documents.

1.2. Additional Covenants

With Declarant’s approval if required pursuant to Section 18.7, the owner of any property within Koa Ridge may impose additional covenants on its property, in addition to the Governing Documents. Such additional covenants include, by way of example, Parcel Covenants as hereinafter defined. Declarant also reserves the right on its own to record and enforce additional covenants, restrictions and other encumbrances against property within the Community or to be made part of the Community. If given such authority in the instrument setting forth such additional covenants, the Owners Association shall have standing and the power to enforce any such additional covenants.

1.3. Conflicts

If there are conflicts between any of the Governing Documents and Hawaii law, Hawaii law shall control.

If there are differences between the Governing Documents and any covenants, restrictions or other encumbrances other than the Governing Documents recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants, restrictions or other encumbrances), the stricter standard shall control, and in the event of a direct conflict between the Governing Documents and any such additional covenants, restrictions or other encumbrances recorded on property within the Community (or the rules or policies adopted pursuant to any such additional covenants, restrictions or other encumbrances) previous to the recording of this Declaration of Community Covenants, the previously recorded covenants, restrictions or encumbrances shall control unless specifically made subordinate to the Governing Documents. In the event of a direct conflict between the Governing Documents and any additional covenants, restrictions or other encumbrances recorded on property within the Community (or the rules or policies adopted pursuant to any such additional covenants,

restrictions or other encumbrances) after the recording of this Declaration of Community Covenants, the Governing Documents shall control.

If there are conflicts between or among any of the Governing Documents, then this Declaration of Community Covenants, the Articles of Incorporation, the By-Laws, the Design Guidelines, the Rules, and the Board Resolutions (in that order) shall control; provided that a Supplement recorded or approved in writing by Declarant during the Development and Sale Period shall take precedence over all other Governing Documents if it so specifically states.

If any court determines that any provision of this Declaration of Community Covenants is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

The terms used in this Declaration of Community Covenants have the meaning described in the paragraph where they first appear in bold print. An index to defined terms follows the Table of Contents. All other terms used in this Declaration of Community Covenants have their natural, commonly accepted definitions.

1.5. Certain Definitions and Interpretation of Certain References

The following references used in any of the Governing Documents shall be generally interpreted as described below unless otherwise provided in the particular Governing Document:

Articles of Incorporation. “**Articles of Incorporation**” means the Articles of Incorporation of Koa Ridge Owners Association, which establish the Owners Association as a Hawaii nonprofit corporation.

Board. “**Board**” means the board of directors of the Owners Association.

Board Resolutions. “**Board Resolutions**” means the resolutions which the Board adopts from time to time to govern the internal affairs of the Owners Association, or to establish rules, policies, and procedures for the operation of the Owners Association and its activities, or for the operation and use of property within the Community or for which the Owners Association is responsible.

By-Laws. “**By-Laws**” means the By-Laws of Koa Ridge Owners Association adopted by its Board of Directors, which govern the internal affairs of the Owners Association.

Consent or Approval. All references in the Governing Documents to “**consent**” or “**approval**” shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the reasonable discretion of the Person whose consent or approval is required.

Design Guidelines. “**Design Guidelines**” means the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5. The Design Guidelines govern new

construction and modifications, including structures, landscaping, and other improvements in the Community.

Determination. Unless otherwise expressly qualified in the specific provision, all references in the Governing Documents to the right to “**determine**” any matter shall refer to the power or right to decide or act, exercised reasonably, after consideration of relevant factors.

Discretion. All references in the Governing Documents to “**discretion**” shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Documents and Agreements. Except as otherwise specifically provided in the Governing Documents, references to documents and agreements (including, without limitation, specific agreements and general references to deeds, leases and other documents) shall refer to those documents and agreements as the same may be supplemented and amended from time to time.

Government Agencies or Authorities. References to any “**government agency**” or “**government authority**” shall refer to such government agency or authority and its successor agency or authority, and in the event that a government agency or authority is terminated or its authority or jurisdiction over the relevant subject matter is transferred to another agency or authority, the reference shall mean the successor agency or authority or the agency or authority succeeding to the duties, oversight and responsibilities in respect of the relevant subject matter.

Koa Ridge Standard. Where the Governing Documents require compliance with the “**Koa Ridge Standard**,” the standard to be applied is the higher of: (a) the standard of use and operations, conduct, maintenance, and appearance generally then prevailing in Koa Ridge, or (b) the minimum standards described in the Master Plan, this Declaration of Community Covenants, the Design Guidelines, the Rules, and/or Board Resolutions. The Koa Ridge Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Declarant, the Board or the Reviewer. Not all aspects of the Koa Ridge Standard will be set out in writing, as some elements comprising the Koa Ridge Standard require the exercise of subjective judgment and cannot be reduced to written criteria. Declarant initially shall establish the Koa Ridge Standard, and the Koa Ridge Standard may evolve as development progresses and as Koa Ridge matures.

Maintenance. All references in this Declaration of Community Covenants to “**maintenance**” shall refer to maintenance, repair, and, except as otherwise specifically conditioned in this Declaration of Community Covenants, replacement.

Majority. Except as otherwise specifically provided in this Declaration of Community Covenants or in a Governing Document, all references in the Governing Documents to a “**majority**” mean those votes of Parcel Owners, Sub-Unit Owners, or other group, as the context may indicate, totaling more than 50% of the total number of eligible votes of such group.

Notice. All references in this Declaration of Community Covenants to “**notice**” or “**notify**” or any derivative of such terms shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or, with a printed confirmation of transmission, by facsimile or electronic mail. Notices shall be deemed to have been duly given and effective when delivered to the intended recipient or authorized representative or agent of the intended recipient as set forth in Section 2.9.

Occupant. References in this Declaration of Community Covenants to an “**Occupant**” of a Parcel, Sub-Unit or other property shall mean and include any Person occupying or using such Parcel, Sub-Unit or other property, including the tenants, invitees and guests of the owner of such Parcel, Sub-Unit or other property.

Person. References in the Governing Documents to a “**Person**” shall mean a natural individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a “**recorded**” legal instrument, or to “**recordation**” or the “**recording**” of a legal instrument, shall mean an instrument recorded or filed or the recording or filing of a legal instrument in the official records of the Bureau of Conveyances of the State of Hawaii, or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, or such other place designated as the official location for recording or filing documents affecting title to real estate in order to make them a matter of public record, as applicable.

Restricted Residential Project. “**Restricted Residential Project**” means (a) a residential for-sale or rental project in which sales and leases are restricted to buyers and tenants whose incomes are deemed low income by the City & County of Honolulu or the State of Hawaii (currently set at eighty percent or less of the HUD Area Median Income for Honolulu), or (b) such other project specifically identified as a “**Restricted Residential Project**” in a Supplement, or by Declarant during the Declarant Control Period and thereafter by the Board.

Rules. “**Rules**” means the rules of the Owners Association adopted pursuant to Section 7.2. The initial Rules of the Owners Association are set forth in Exhibit “C” to this Declaration of Community Covenants. Rules may govern uses and activities within Koa Ridge and the operation, use and availability of services and facilities offered by the Owners Association. Different parts of the Rules may apply to the Residential Parcels, Non-Residential Parcels, particular Special Use Areas, particular Special Benefited Areas, and other classes of property or Parcels within Koa Ridge. The Rules may also include governance procedures applicable to the Residential Committee, the Non-Residential Committee, Special Benefited Area Committees and other committees and subcommittees of the Owners Association.

Supplement. “**Supplement**” means a recorded or unrecorded supplement to this Declaration of Community Covenants. Supplements may take any form or be denominated in any manner including, by way of example, a recorded supplement, deed restriction, lease, condominium document, or easement, a recorded or unrecorded license or maintenance agreement, or a written declaration by Declarant. An assignment to the Owners Association of rights or privileges held by Declarant pursuant to deed restrictions or private covenants may also constitute a Supplement. A Supplement may submit a portion of the Additional Property to this

Declaration of Community Covenants, identify or modify Parcels and establish or modify Parcel boundaries, designate or modify Parcel Use Designations and classifications (and thereby modify the Membership classes or subclasses of the Owners of Parcels or Sub-Units within Parcels), establish specific permitted residential, non-residential, community support, civic and other uses within Parcels, impose additional obligations and restrictions or modify the obligations or restrictions of this Declaration of Community Covenants as to a Parcel, establish maximum development densities for Parcels, (including, by way of example, the maximum number of dwelling units which may be developed on Residential Parcels, Restricted Residential Parcels, or Mixed Use Parcels, the maximum gross floor area for Non-Residential Uses on Mixed Use Parcels or Non-Residential Parcels or the maximum gross floor area of Community Support Uses or Civic Uses on any Parcel), establish commencement dates for assessments and/or voting rights on particular Parcels and/or modify the allocation of assessments and/or voting rights on particular Parcels, create easements, identify and designate Common Area, Residential Area of Common Responsibility (including Universal Residential Area of Common Responsibility and Standard Residential Area of Common Responsibility), Non-Residential Area of Common Responsibility, General Area of Common Responsibility, Special Use Areas, Special Benefited Areas or Association Maintenance Walls, or any of the foregoing. Exhibit "A-1" attached to this Declaration of Community Covenants constitutes a Supplement with respect to the Initial Property made subject to this Declaration of Community Covenants.

Chapter 2 Key Parties and Their Roles

2.1. Declarant

Declarant, as the master developer of Koa Ridge, has established the vision for the Community and, through the initial Governing Documents, has set forth the founding principles that will guide the development and operation of Koa Ridge.

Declarant's proposed plan for development of Koa Ridge is described in (a) the various land use plan(s), permits, and other applications and approvals for Koa Ridge approved by the City and County of Honolulu and the State of Hawaii, as may be supplemented and amended from time to time, and (b) the Koa Ridge Urban Design Plan dated May, 2018, adopted pursuant to the provisions of Condition 5 of the Zoning Ordinance, as may be supplemented and amended from time to time (collectively, the "**Master Plan**"). However, Declarant is not obligated to submit property shown on the Master Plan to this Declaration of Community Covenants, nor does the Declarant guarantee that the property depicted on the Master Plan will in fact be developed and used as depicted in the Master Plan. In addition, Declarant may submit property to this Declaration of Community Covenants that is not shown on the Master Plan.

Declarant has reserved various rights for itself in the Governing Documents with respect to development and administration of Koa Ridge, including, but not limited to, the right to submit any of the property described in Exhibit "B" (the "**Additional Property**") to this Declaration of Community Covenants, and the various rights set forth in Chapter 17 and Chapter 18. Unless otherwise specified, Declarant may exercise its reserved rights during the Development and Sale Period.

As provided in Section 18.13, Declarant may assign all or any portion of its status as Declarant under the Governing Documents, all or any portion of Declarant's rights, and/or all or any obligations of Declarant under the Governing Documents to any Person.

The "**Development and Sale Period**" shall commence on the date of this Declaration of Community Covenants and continue until the latest of the following:

(a) such time as the Initial Property and Additional Property planned for development as part of Koa Ridge pursuant to the Master Plan have been so developed, and are improved with structures for which all necessary approvals constituting a condition for occupying such structures (e.g., a certificate of occupancy issued by the City and/or County of Honolulu) have been issued;

(b) such time as Declarant or any Declarant Affiliate (defined below) no longer owns any real property in Koa Ridge; or

(c) the expiration of Declarant's option to expand the Community pursuant to Chapter 17;

provided, in no event shall the Development and Sale Period expire prior to the expiration or termination of the Declarant Control Period (defined below). Notwithstanding the above,

Declarant, in a recorded instrument, may forfeit, terminate or temporarily or for a period of time suspend any or all of its rights prior to the termination of the Development and Sale Period.

The “**Declarant Control Period**” begins on the date of this Declaration of Community Covenants and terminates upon the first of the following to occur:

(a) when 100% of the property within the Initial Property and the Additional Property, including all Parcels and Sub-Units within such property, have been conveyed to or are owned by Persons other than Declarant, a Declarant Affiliate, or a Parcel Developer;

(b) December 31, 2065; or

(c) when, in its discretion, Declarant so determines and declares in a recorded instrument.

A “**Declarant Affiliate**” is any Person that controls, is controlled by, or is under common control with Declarant, and any Person that is owned by, or is an owner, a member, a partner, a joint venture partner, or a shareholder of, Declarant.

A “**Parcel Developer**” is (a) Declarant or a Declarant Affiliate as to any Parcel that it owns, and (b) any other Person who purchases or otherwise obtains an ownership interest in a Parcel for development and resale in the ordinary course of its business. For purposes of determining the Declarant Control Period, a Parcel Developer shall be deemed to hold title to a Parcel for so long as it continues to own any portion of the Parcel, including any Sub-Unit, for purposes of development, construction, and/or resale.

2.2. The Owners Association

The Owners Association is the entity primarily responsible for managing and administering Koa Ridge in accordance with the Governing Documents. The Owners Association may exercise all rights, privileges and powers which the Governing Documents or Hawaii law expressly grants to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right, privilege or power.

2.3. The Board

The Board is responsible for administration, management, and operation of the Owners Association. The Board is selected as provided in the Articles of Incorporation and the By-Laws. Individual members of the Board are referred to as the “**Directors**” of the Owners Association. Unless the Governing Documents or Hawaii law specifically provide otherwise, the Board may exercise the Owners Association’s rights and powers without a vote or consent or approval of the membership.

In exercising the Owners Association’s rights and powers, making decisions on the Owners Association’s behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Owners Association’s affairs, Board members and the Owners Association’s officers may exercise discretion to the

fullest extent permitted under Hawaii law subject to the standards of conduct set forth in the Governing Documents or under Hawaii law.

The Board may institute, defend, settle, or intervene on behalf of the Owners Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Owners Association or its members.

2.4. The Owners

Subject to the provisions below with respect to Sub-Units and Parcel Associations, each Person that holds record title to a Parcel is referred to in the Governing Documents as a “**Parcel Owner**.” Every Parcel Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Declaration of Community Covenants and other Governing Documents.

If a Parcel subject to this Declaration of Community Covenants consists of, is subdivided into, or is made subject to a condominium regime which consists of two or more Sub-Units, each Sub-Unit and the common area and common elements within or appurtenant to such Parcel or appurtenant to any such Sub-Unit shall be subject to this Declaration of Community Covenants and the Governing Documents. Each Parcel which includes or consists of two or more Sub-Units shall be subject to a separate condominium or other owners association formed to administer covenants applicable to that particular Parcel (“**Parcel Covenants**”). Any such condominium or other owners association is referred to in this Declaration of Community Covenants as a “**Parcel Association**”; provided, in the case of a Parcel which is governed by a master condominium or other master owners association containing one or more subordinate sub-associations, the master condominium or master owners association for the Parcel (and not any such sub-association) shall be the Parcel Association with respect to such Parcel.

Unless otherwise specifically provided in the Governing Documents, if a Parcel includes or consists of two or more Sub-Units, the Parcel Association (i) shall act on behalf of all owners of Sub-Units (“**Sub-Unit Owners**”) within the Parcel, (ii) shall be deemed to be the Parcel Owner for such Parcel for all purposes under this Declaration of Community Covenants and the Governing Documents, (iii) shall be the member of the Owners Association with respect to such Parcel, and (iv) shall be authorized to receive all notices on behalf of Sub-Unit Owners within its Parcel. Except as otherwise specifically provided in the Governing Documents, (a) Sub-Unit Owners shall act through their respective Parcel Associations, (b) notice delivered to the Parcel Association in accordance with Section 2.9 shall constitute effective notice to all Sub-Unit Owners, and (c) the actions, instructions, agreements and votes of the Parcel Association shall be binding upon all Sub-Unit Owners within the Parcel. Although Sub-Unit Owners are subject to this Declaration of Community Covenants, unless otherwise specifically provided in the Governing Documents, Sub-Unit Owners shall not be considered Parcel Owners under this Declaration of Community Covenants and are not considered to be individual members of the Owners Association. For avoidance of doubt, if a Parcel consists of a single condominium unit

or subdivided lot, then the Owner of such unit or lot shall be considered the Parcel Owner of such Parcel.

If a Parcel or Sub-Unit is subject to a recorded long-term lease and the lease specifically so states, the lessee (rather than the holder of fee simple title) will be considered the owner of the Parcel or Sub-Unit. As used herein, a “**recorded long-term lease**” shall mean a lease of an entire Parcel or Sub-Unit having a term of fifteen (15) or more years (without regard to extension options) that has been recorded or filed or a memorandum of which has been recorded or filed. However, any Person who holds (a) title to a Parcel or Sub-Unit merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument), or (b) a lease for a portion of a Parcel or Sub-Unit, is not considered the owner of the Parcel Owner or Sub-Unit.

If more than one Person holds record title to a Parcel or Sub-Unit, each co-Owner is jointly and severally obligated to perform the responsibilities of the Parcel Owner or Sub-Unit Owner under the Governing Documents. If a Parcel is owned by more than one co-Owner without Sub-Units having been created, the Parcel as a whole may be made subject to Parcel Covenants and a co-owners association may be created to govern the respective rights and obligations of the co-Owners, in which event (a) each co-Owner of the Parcel shall be treated as a Sub-Unit Owner under the Governing Documents, (b) the co-owners association shall be deemed to be the Parcel Owner for such Parcel for all purposes under this Declaration of Community Covenants and the Governing Documents, and shall be treated as, and shall have all rights, obligations and privileges of, a Parcel Association under the Governing Documents, (c) such co-owners association shall be the member of the Owners Association with respect to such Parcel and shall be authorized to receive all notices on behalf of the co-owners of the Parcel. If no co-owners association is formed for such Parcel, then the rights and privileges of all co-Owners of the Parcel under the Governing Documents shall be exercised by a single individual unanimously appointed in writing by the co-Owners. Notice delivered to such representative shall constitute effective notice to all such co-Owners, and the actions, instructions and agreements of such representative shall be binding upon all co-Owners of the Parcel. If the co-Owners fail to provide written notice satisfactory to the Board of the appointment of such individual representative, then (a) notice delivered to any one such co-Owner shall constitute effective notice to all co-Owners, (b) the actions, instructions, agreements and votes of any one such co-Owner shall be binding on all co-Owners of the Parcel, and (c) the Owners Association, the Board, the Declarant, the Reviewer and their various officers, directors, members and partners may in their discretion disregard any conflicting votes, demands or instructions that they may receive from such co-Owners.

In the event that the same Parcel Association is the Parcel Owner for two or more Parcels, it will serve as the Parcel Owner for each such Parcel, but each such Parcel shall remain a separate and distinct Parcel unless otherwise provided in a Supplement.

References to “**Owners**” in the Governing Documents shall be deemed to refer to Parcel Owners and/or Sub-Unit Owners, as applicable.

2.5. Committees

Certain administrative, operation and management functions of the Owners Association are delegated to committees. The Owners Association may have the following committees:

- (a) The Architectural Review Committee, described in Section 5.2;
- (b) A Residential Committee (the “**Residential Committee**”), consisting of up to five (5) members, to assist in the administration, operation and management of the Residential Area of Common Responsibility and in the regulation and use of the Residential Parcels, Restricted Residential Parcels, Residential Sub-Units, Restricted Residential Projects, and the residential units and apartments within the Mixed Use Parcels, or as otherwise specified by the Board; during the Declarant Control Period, Declarant is entitled to appoint three (3) of the members of the Residential Committee, and up to two (2) members of the Residential Committee shall be appointed or elected by the Residential Class of Members as provided in the By-Laws (provided that there is at least one such Member); after the Declarant Control Period all of the members of the Residential Committee shall be appointed or elected as provided in the By-Laws;
- (c) A Non-Residential Committee (the “**Non-Residential Committee**”), to assist in the administration, operation and management of the Non-Residential Area of Common Responsibility and in the regulation and use of the Non-Residential Parcels and the non-residential units and spaces within the Mixed Use Parcels, or as otherwise specified by the Board; during the Declarant Control Period, the Non-Residential Committee shall consist of up to seven (7) members, four (4) of which shall be appointed by the Declarant, and the Industrial Subclass, the Commercial Subclass and the Health Care Subclass of Members (provided that there is at least one Member in each such respective subclass) shall each be entitled to elect one (1) member of the Non-Residential Committee, based upon the number of Non-Residential Votes held by each Member within each such subclass; after the Declarant Control Period, the Non-Residential Committee shall consist of up to five (5) members, and the Industrial Subclass, the Commercial Subclass and the Health Care Subclass of Members (provided that there is at least one Member in each such respective subclass) shall continue to each be entitled to elect one (1) member of the Non-Residential Committee based upon the number of Non-Residential Votes held by each Member within each such subclass, and the remaining two (2) members of the Non-Residential Committee shall be appointed or elected as provided in the By-Laws;
- (d) Special Benefited Area Committees, described in Section 3.3; and
- (e) Such additional committees as may be created and appointed in accordance with this Declaration of Community Covenants and the Governing Documents.

2.6. Mortgagees; Lessors under Recorded Long-Term Leases

If a Parcel or Sub-Unit is made subject to a mortgage or other form of instrument securing a debt or other obligation and constituting a lien against a Parcel (a “**Mortgage**”), then the holder or beneficiary of that Mortgage (“**Mortgagee**”) also has an interest in the administration of Koa Ridge. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

Certain Parcels or Sub-Units may be subject to recorded long-term leases as described in Section 2.4 of this Declaration of Community Covenants. For purposes of this Declaration of Community Covenants, if a Parcel or Sub-Unit is subject to a recorded long-term lease and the lease specifically states that the lessee (rather than the holder of fee simple title) will be considered the owner of the Parcel or Sub-Unit for purposes of the Governing Documents, then the lessor under such recorded long-term lease shall have the same rights, protections, responsibilities, and obligations as do Mortgagees, and any reference to Mortgagees in this Declaration of Community Covenants shall be deemed to include such lessors; provided, as applied to such lessors, a reference to foreclosure or deed in lieu of foreclosure by a Mortgagee shall be deemed to refer to eviction, dispossessory proceedings, or other actions taken under a lease by a lessor to remove a lessee from possession of all or a portion of a Parcel or Sub-Unit.

Notwithstanding anything to the contrary herein, a lease shall not be deemed part of the Governing Documents, but shall be an independent instrument, and any amendment, modification, or termination of a lease shall be governed by the terms of the lease and not the provisions of this Declaration of Community Covenants.

2.7. Transfer of Title; Records and Notice of Sub-Unit Owners

Any Parcel Owner that sells or otherwise transfers title to its Parcel shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require within thirty (30) days of such transfer. In addition, each Parcel Association shall at all times maintain a current list of all Sub-Unit Owners within its Parcel and shall provide such list to the Board annually, on or before January 31 of each year, and from time to time during the course of the year upon the Board's request. Such list shall include the name and address of each Sub-Unit Owner within its Parcel, and may be provided in electronic format or in such other manner as may be permitted by the Board.

Any Person transferring title to a Parcel or Sub-Unit shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner under the Governing Documents, including assessment obligations, until the date upon which the Board receives notice of transfer of title.

2.8. Estoppels

Within 30 days after the written request of any Parcel Owner or any Sub-Unit Owner, the Owners Association shall issue for the benefit of such Owner or its actual or prospective transferee or Mortgagee, (a) an estoppel certificate representing the status of such Owner and its Parcel or Sub-Unit with respect to payment of assessments and compliance with the Governing Documents; (b) a summary of the status of the Owners Association, including its current and planned budgets, financial statements, and current and intended assessment schedule, and non-confidential information regarding the existence and nature of any litigation involving the Owners Association; and (c) such other reasonably requested non-confidential information customarily provided by owners associations in Hawaii. The Owners Association may charge a reasonable fee for any such estoppel certificate or requested information, which fee may include

the cost of reasonable attorneys' fees incurred by the Owners Association in addressing such request.

2.9. Delivery of Notices

Except as otherwise specifically provided in the Governing Documents, notice to any Person shall be deemed to have been duly given and effective if as follows:

(a) Notices delivered to the president, any vice-president, or the managing agent designated by the president, of a Parcel Association shall constitute effective notice to the Parcel Association and all Sub-Unit Owners belonging to that Parcel Association. Each Parcel Association shall promptly forward all such notices to its Sub-Unit Owners, but notices delivered to such president, vice-president or managing agent of such Parcel Association shall constitute effective notice to all such Sub-Unit Owners.

(b) Notices to any particular Sub-Unit Owner or any particular Parcel Owner may be delivered to the president, any vice-president, or the managing agent designated by the president, of such Owner's respective Parcel Association. The Parcel Association shall promptly forward such notice to such Owner, but such notice delivered to such president, vice-president or managing agent shall constitute effective notice to such Sub-Unit Owner or Parcel Owner. Notice to any particular Sub-Unit Owner or any particular Parcel Owner may also be delivered directly to such Owner.

(c) Notices to the Owners Association or to the Board of Directors of the Owners Association delivered to the president of the Owners Association, any vice-president of the Owners Association, or managing agent designated by the president of the Owners Association shall constitute effective notice to the Owners Association or its Board of Directors.

(d) Notices to any committee or subcommittee of the Owners Association delivered to the chairperson of such committee or subcommittee shall constitute effective notice to such committee or subcommittee. If any such committee or subcommittee shall not have a chairperson, then notice delivered to any two members of such committee or subcommittee shall constitute effective notice to such committee or subcommittee.

(e) Notices to the Declarant delivered to the president of the Declarant or any two vice-presidents of the Declarant shall constitute effective notice to the Declarant.

(f) Notices to any other Person that is not a natural individual, delivered to the president, chief executive officer, chairman of the board, any vice-president, any general partner, or any manager or managing member, or to any agent designated by any of the foregoing, shall constitute effective notice to such Person.

(g) If the intended recipient is a natural individual, notices delivered directly to such individual shall also be deemed to have been duly given and effective when delivered to such individual.

(h) Notices shall be deemed to have been duly given and effective:

(i) if sent by United States mail, three days after being deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or by written confirmation from the deliverer that delivery was accepted; or

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

Chapter 3

Parcels, Area of Common Responsibility and Other Areas Within Koa Ridge

3.1. Property Within Koa Ridge

Parcels. Except as provided below, a “**Parcel**” is a portion of Koa Ridge designated as a separate Parcel in one or more Supplements, whether improved or unimproved, which is intended for development, use, and occupancy in a manner consistent with the Master Plan; provided, however, that lots and condominium units within the Common Area shall not be Parcels. A Parcel may consist of one or more condominium units, one or more subdivided lots, portions of one or more subdivided lots or condominium units, or any combination thereof. As specifically provided therein, a recorded Supplement may also limit or modify the application of all or portions of the Governing Documents as to specifically designated Parcels or portions of Koa Ridge. A Parcel shall include the land or air space that is part of the Parcel as well as any improvements thereon. Without limitation, a Parcel may be comprised of contiguous or non-contiguous real property, including airspace.

With respect to any Parcel within Koa Ridge, the term Parcel refers collectively to the Parcel itself, any and all Sub-Units within such Parcel, and any common area or common elements within such Parcel or subject to the Parcel Association for such Parcel. Parcels may be consolidated subject to this Declaration of Community Covenants and Hawaii law and Parcels are subject to further subdivision, including the creation of Sub-Units within a Parcel, in accordance with and subject to this Declaration of Community Covenants, the Governing Documents, and Hawaii law. If a Parcel subject to this Declaration of Community Covenants is subdivided into two or more Sub-Units, each such Sub-Unit and common area and common elements within that Parcel or appurtenant to any such Sub-Unit shall be subject to this Declaration of Community Covenants and the Governing Documents.

The boundaries of a Parcel may be amended by a Supplement in accordance with the provisions of this Declaration of Community Covenants and the Governing Documents.

Sub-Units. If a Parcel subject to this Declaration of Community Covenants consists of, is subdivided into, or is made subject to a condominium regime which consists of, two or more subdivided lots or two or more individually conveyable condominium units or other individually conveyable real estate interests, each such lot, condominium unit or other real estate interest is referred to herein as a “**Sub-Unit**”. Each Sub-Unit upon a Residential Parcel or Restricted Residential Parcel, and each Sub-Unit on a Mixed Use Parcel that is used for or restricted to Residential Use, is referred to herein as a “**Residential Sub-Unit**”. Each Sub-Unit upon a Non-Residential Parcel and each Sub-Unit on a Mixed Use Parcel that is used for or restricted to Non-Residential Use is referred to herein as a “**Non-Residential Sub-Unit**”.

Area of Common Responsibility. The phrase “**Area of Common Responsibility**” refers, collectively, to any properties and facilities for which the Owners Association has maintenance or other responsibility under the Governing Documents, including any properties and facilities for which the obligation to maintain has been delegated to the Owners Association by the Declarant or in a Supplement, and any properties and facilities for which the Owners Association otherwise agrees to assume responsibility, regardless of ownership. Upon such

delegation to, or assumption by, the Owners Association, Declarant's rights over such properties or facilities shall be limited as provided in this Declaration of Community Covenants and the Governing Documents and by the terms of the delegation or assumption instruments. The Area of Common Responsibility includes property that the Owners Association owns or in which the Owners Association otherwise holds possessory or use rights (i.e., the Common Area), and also includes portions of Parcels, public open space and parks, and property dedicated or intended to be dedicated to the public, such as public rights-of-way, landscaping areas, and median or planting strips, for which the obligation to maintain has been delegated to the Owners Association by the Declarant or in a Supplement, or responsibility for which the Owners Association otherwise agrees to assume.

Each portion of the Area of Common Responsibility shall be designated as falling within the Residential Area of Common Responsibility, the Non-Residential Area of Common Responsibility, the General Area of Common Responsibility, or a Special Use Area. Each portion of the Residential Area of Common Responsibility shall be further designated as falling within the Universal Residential Area of Common Responsibility (generally benefitting or the responsibility of all Residential Members) or the Standard Residential Area of Common Responsibility (generally benefitting or the responsibility of the General Residential Subclass of Members but not the Restricted Residential Subclass of Members), as described in this Declaration of Community Covenants.

At any time, Declarant may, by Supplement and without the consent or approval of any other Person, designate property within or in the vicinity of Koa Ridge, including portions of Parcels, as Area of Common Responsibility, or may more particularly describe areas otherwise designated as part of the Area of Common Responsibility, and such designations and descriptions shall be binding upon the Owners Association and the Owners. In addition, the Owners Association may designate portions of Koa Ridge as Area of Common Responsibility as specifically or implicitly provided in this Declaration of Community Covenants.

The Area of Common Responsibility, and the process by which Area of Common Responsibility is identified and designated, is described further in Section 9.2.

Common Area. The “**Common Area**” includes those portions of the Area of Common Responsibility, if any, that the Owners Association owns or in which it otherwise holds a real property interest or possessory or use rights (such as by lease or easement).

Residential Area of Common Responsibility. The “**Residential Area of Common Responsibility**” is intended to principally benefit the Residential Parcels, the Restricted Residential Parcels, the Residential Sub-Units, Residential Uses upon the Mixed Use Parcels, and the Residential Class of Members. The Residential Area of Common Responsibility shall be the responsibility of the Residential Class of Members. The Residential Area of Common Responsibility may include such areas as parks and recreational centers, and bikeways intended for the primary use and benefit of residential Owners within Koa Ridge.

The Residential Area of Common Responsibility shall consist of areas intended to principally benefit or to be the responsibility of all of the Residential Class of Members (the “**Universal Residential Area of Common Responsibility**”) and areas intended to principally

benefit or to be the responsibility of all of the General Residential Subclass of Members but not the Restricted Residential Subclass of Members (the “**Standard Residential Area of Common Responsibility**”).

During the Development and Sale Period, Declarant may, without the consent or approval of any other Person, designate property as being part of the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility in a deed, lease or easement conveying or granting such property to the Owners Association or in a Supplement. During the Development and Sale Period, Declarant may also unilaterally amend the designation of any Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility, change the boundaries of any Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility or add areas to or remove areas from the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility in accordance with the provisions of Section 18.4. After the Development and Sale Period, the Board shall have the right to designate property as being part of the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility, change the boundaries of any Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility, or add areas to or remove areas from the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility, with the vote or approval of Parcel Owners entitled to cast at least a majority of the total Residential Votes, exercised in accordance with the provisions of Section 4.2, provided however, that the Restricted Residential Subclass of Members shall be excluded from any votes pertaining solely to the Standard Residential Area of Common Responsibility.

Non-Residential Area of Common Responsibility. The “**Non-Residential Area of Common Responsibility**” is intended to principally benefit the Non-Residential Parcels, the Non-Residential Sub-Units, Non-Residential Uses upon the Mixed Use Parcels, and the Non-Residential Class of Members. The Non-Residential Area of Common Responsibility shall be the responsibility of the Non-Residential Class of Members. The Non-Residential Area of Common Responsibility may include such areas as commercial roadways and pedestrian paths and landscaping intended for the primary use and benefit of non-residential Owners within Koa Ridge.

During the Development and Sale Period, Declarant may, without the consent or approval of any other Person, designate property as being part of the Non-Residential Area of Common Responsibility in a deed, lease or easement conveying or granting such property to the Owners Association or in a Supplement. During the Development and Sale Period, Declarant may also unilaterally amend the designation of any Non-Residential Area of Common Responsibility, change the boundaries of any Non-Residential Area of Common Responsibility or add areas to or remove areas from the Non-Residential Area of Common Responsibility in accordance with the provisions of Section 18.4. After the Development and Sale Period, the Board shall have the right to designate property as being part of the Non-Residential Area of Common Responsibility, change the boundaries of any Non-Residential Area of Common Responsibility or add areas to or remove areas from the Non-Residential Area of Common Responsibility, with the vote or approval of Parcel Owners entitled to cast at least a majority of the total Non-Residential Votes, exercised in accordance with the provisions of Section 4.2.

General Area of Common Responsibility. The “**General Area of Common Responsibility**” is intended to principally benefit all Parcels within the Community, and shall be the responsibility of all Parcel Owners. The General Area of Common Responsibility may include such areas as the principal roadways of Koa Ridge, the drainage system for, or required or built or improved in connection with the development of, Koa Ridge, the major entry areas and signage for Koa Ridge and all or portions of the land occupied by or in the vicinity of the Waiahole Ditch.

During the Development and Sale Period, Declarant may, without the consent or approval of any other Person, designate property as being part of the General Area of Common Responsibility in a deed, lease or easement conveying or granting such property to the Owners Association or in a Supplement. During the Development and Sale Period, Declarant may also unilaterally amend the designation of any General Area of Common Responsibility, change the boundaries of any General Area of Common Responsibility or add areas to or remove areas from the General Area of Common Responsibility in accordance with the provisions of Section 18.4. After the Development and Sale Period, the Board shall have the right to designate property as being part of the General Area of Common Responsibility, change the boundaries of any General Area of Common Responsibility or add areas to or remove areas from the General Area of Common Responsibility, with the vote or approval of Parcel Owners entitled to cast at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes, exercised in accordance with the provisions of Section 4.2.

Special Use Areas. Any portion of the Area of Common Responsibility may be designated as a “**Special Use Area**” and assigned for the exclusive use or primary benefit or control of less than all Parcels or Sub-Units. Special Use Areas might also include such areas and facilities as entry features, parking areas, group mailboxes or mailbox kiosks, recreational or social facilities, and components of infrastructure or utility or other systems or services designed or intended to benefit or serve particular Parcels and/or Sub-Units, or to be subject to the control of particular Parcels and/or Sub-Units. Special Use Areas might also include roadways, sidewalks, median areas, planting strips and landscaping areas within or abutting certain Parcels and/or Sub-Units, whether or not dedicated or intended to be dedicated to the public, designated for the exclusive or primary benefit or control of such Parcels and/or Sub-Units. During the Development and Sale Period, Declarant may, without the consent or approval of any other Person, designate property as a Special Use Area and assign all or part of its use, benefit or control to particular Parcels and/or Sub-Units, by way of a Supplement (including by way of a deed, lease, easement or other instrument conveying or granting such property to the Owners Association), and each group of Parcels and/or Sub-Units to which the use, benefit, responsibility or control of a Special Use Area is assigned shall constitute a Special Benefited Area as described in Section 3.3 below. At any time during the Development and Sale Period, Declarant may also unilaterally amend this Declaration of Community Covenants or any Supplement to change the boundaries of or eliminate any Special Use Area. In addition, the Board, by Board Resolution, may designate Special Use Areas or change the boundaries of or eliminate any Special Use Area in accordance with the provisions of Section 9.3.

During the Development and Sale Period, the Declarant may unilaterally designate or amend the Special Benefited Area to which a Special Use Area is assigned as described in Section 3.3. The Board, by Board Resolution, may designate or modify the Special Benefited

Area to which a Special Use Area is assigned in accordance with the provisions of Section 10.2(b).

3.2. Parcel and Sub-Unit Use Designations

Each Parcel shall be assigned a “**Use Designation**” which will determine the uses which may be made upon that Parcel, the class and subclass of membership to which its Parcel Owner will belong, and the rights and obligations of its Owner under the Governing Documents. Subject to modification as provided in Section 7.1(h) or as otherwise provided in the Governing Documents, the Use Designation for each Parcel shall be established by Supplement, as follows:

Residential Parcels. “**Residential Parcels**” shall be those Parcels designated for residential use, other than the Restricted Residential Parcels. For avoidance of doubt, if all or any part of a Residential Parcel is used for a Restricted Residential Project or affordable dwellings, units or apartments, it shall still be considered a Residential Parcel (and its Parcel Owner shall be considered a member of the General Residential Subclass of Members) unless Declarant or the Board shall modify such Parcel’s Use Designation in accordance with the provisions of Section 7.1(h).

Restricted Residential Parcels. “**Restricted Residential Parcels**” shall be those Parcels designated in a Supplement for development and use as Restricted Residential Projects, but only to the extent that and for so long as such Parcels of used for such purposes. For avoidance of doubt, if all or any part of a Restricted Residential Parcel is used for Residential Uses other than a Restricted Residential Project, it shall still be considered a Restricted Residential Parcel (but its Parcel Owner shall be considered a member of the General Residential Subclass of Members with respect to such other Residential Uses), unless Declarant or the Board shall modify such Parcel’s Use Designation in accordance with the provisions of Section 7.1(h).

Mixed Use Parcels. “**Mixed Use Parcels**” shall be those Parcels designated for a mixture of residential and commercial uses.

Commercial Parcels. “**Commercial Parcels**” shall be those Parcels designated for commercial uses, other than the Industrial Parcels and the Health Care Parcels.

Health Care Parcels. “**Health Care Parcels**” shall be those Parcels designated for medical and health care related uses.

Industrial Parcels. “**Industrial Parcels**” shall be those Parcels designated for industrial uses.

Community Support Parcels. “**Community Support Parcels**” shall be those Parcels designated for community support purposes, but only to the extent that and so long as such Parcels are used for the Community Support Uses identified in the Supplement designating such Parcels as Community Support Parcels. It is contemplated that Community Support Parcels will include Parcels that are used for churches, places of worship, private elementary, middle and high schools, privately owned or operated preschools and day care facilities, communication facilities, transportation facilities, parking facilities and recycling or waste disposal facilities.

Civic Parcels. “**Civic Parcels**”) shall be (1) those Parcels dedicated to and accepted by a public utility providing water, gas, telephone, Internet, electric or sanitary sewer services to Koa Ridge to the extent that and for so long as such Parcels are used for such purposes (each such Parcel to the extent that and for so long as it is used for such purposes being referred to herein as a “**Public Utility Parcel**”), and (2) those parcels designated for civic purposes but only to the extent that and so long as such Parcels are used by a Government Authority for the Civic Uses identified in the Supplement designating such Parcels as Civic Parcels. It is contemplated that the Civic Parcels will include Parcels that are used for public utilities, fire and police stations, public elementary, middle or high schools (including public charter schools), government owned and operated preschools and day care facilities, and public parks. **Additional Use Designations.** Until Declarant’s rights to unilaterally expand Koa Ridge expire, Declarant may, by Supplement or amendment to Supplement and with the approval of the Owners of the affected Parcels, create additional Use Designations and assign Parcels to such additional Use Designations. Thereafter, the Board may, by Supplement or amendment to Supplement and with the approval of the Owners of the affected Parcels, create additional Use Designations and assign Parcels to such additional Use Designations. Declarant or the Board shall specify in any such Supplement or amendment to Supplement the uses and restrictions applicable to Parcels assigned to such additional Use Designations, the rights, privileges, and obligations of the Owners of any such Parcels, the classes and subclasses of membership to which such Owners will belong, the method for calculating the Equivalent Units assigned to such Parcels, the voting rights and assessment obligations of the Owners of such Parcels, and the effect and resulting changes, if any, that such additional Use Designations may have on the existing Parcels and their Owners.

The Commercial Parcels, the Health Care Parcels, the Industrial Parcels, the Community Support Parcels and the Civic Parcels are collectively referred to herein as the “**Non-Residential Parcels**”. Non-Residential Parcels shall also include Parcels assigned to additional Use Obligations to the extent so specified by Declarant or the Board, as applicable, in a Supplement or amendment to Supplement establishing additional Use Designations.

Except as otherwise specifically provided in a Supplement or otherwise provided in this Declaration of Community Covenants, each Sub-Unit within a Parcel shall have the same Use Designation as the Parcel to which it belongs.

In the event that all or any portion of a Parcel is used for purposes other than as permitted under its Use Designation (including the Civic Uses and Community Support Uses, if any, set forth in a Supplement), then Declarant or the Board shall have the right, as set forth in Section 7.1(h) to modify the Use Designation of all or a portion of such Parcel (and thereby the Membership classes or subclasses of the Owners of such Parcel or Sub-Units within such Parcel) to conform to the actual use of such Parcel or portion thereof.

3.3. Special Benefited Areas

Parcels and/or Sub-Units may be part of one or more “**Special Benefited Areas**” which share particular Special Use Areas and/or receive benefits or services from the Owners Association that the Owners Association does not provide to all Parcels and Sub-Units within Koa Ridge or which share responsibility for or exercise a degree of control over particular

Special Use Areas. For example, and without limitation, a Special Benefited Area may be created for:

- similarly situated Parcels, Sub-Units and/or Owners which receive maintenance or other services that are not provided to all Parcels, Sub-Units, and Owners;
- particular Parcels, Sub-Units and/or Owners that share the use of a common recreational or social amenity or facility (e.g., an amenity or facility created for the use and enjoyment of only some of the residential properties within Koa Ridge);
- particular Parcels, Sub-Units and/or Owners that share the use of parking facilities which are not available to all Parcels, Sub-Units and Owners;
- particular Parcels, Sub-Units and/or Owners that share the exclusive or primary benefit of, or that share responsibility or control over, certain roadways, sidewalks, median areas, planting strips and landscaping areas;
- particular Parcels, Sub-Units and/or Owners that share the use of certain group mailboxes or mailbox kiosks; and/or
- particular Parcels, Sub-Units and/or Owners that receive or benefit from services the Owners Association provides that do not similarly benefit other Owners.

Each Special Use Area shall be assigned to a single Special Benefited Area, but a Special Benefited Area may be entitled to the use and benefit of, or exercise control over, more than one Special Use Area. A Parcel or Sub-Unit may be assigned to more than one Special Benefited Area, depending on the number and types of special benefits or services it receives and the areas for which it shares responsibility or control. A Special Benefited Area may be comprised of Parcels and/or Sub-Units that are not contiguous.

During the Development and Sale Period, Declarant may designate Special Benefited Areas (by name or other identifying designations) and assign Parcels and/or Sub-Units to a particular Special Benefited Area in a Supplement, which Declarant may record and impose upon Parcels and/or Sub-Units without the consent or approval of any other Person. At any time during the Development and Sale Period, Declarant may, without the consent or approval of any other Person, amend this Declaration of Community Covenants or any Supplement to change the boundaries of any Special Benefited Area (including to add Parcels and/or Sub-Units to, or remove Parcels and/or Sub-Units from, a Special Benefited Area) or to eliminate a Special Benefited Area. In addition, the Board may, by Board Resolution, designate, modify, or eliminate Special Benefited Areas, and assign Parcels and/or Sub-Units to Special Benefited Areas in accordance with the provisions of Section 10.2(b).

During the Declarant Control Period, Declarant shall determine the size of and may appoint the members of a “**Special Benefited Area Committee**” to represent and act on behalf of each Special Benefited Area with respect to the improvement, use, maintenance and operation of the Special Use Areas, if any, assigned to the Special Benefited Area, and the services and benefits that the Owners Association provides to the Special Benefited Area. Thereafter, the Parcel Owners and Sub-Unit Owners (acting through their respective Parcel Associations(s))

within each Special Benefited Area shall determine the size of and shall elect the Special Benefited Area Committees in accordance with the By-Laws, based on the number of Equivalent Units held by each; provided that each Special Benefited Area Committee shall include a representative appointed by the Declarant until the expiration of the Development and Sale Period.

3.4. Association Maintenance Walls

The Area of Common Responsibility and Special Use Areas may include Association Maintenance Walls which are maintained or regulated by the Owners Association. “**Association Maintenance Wall**” means any wall or fence which (i) separates any portion of the Area of Common Responsibility from an immediately adjacent Parcel or public property, regardless of whether such wall or fence (a) is located on the common property line separating the Area of Common Responsibility from the adjacent Parcel or public property, or (b) is located wholly or partially within the Area of Common Responsibility or adjacent Parcel or public property, and (ii) has been designated as an Association Maintenance Wall by Declarant or the Owners Association. Association Maintenance Walls may be part of the General Area of Common Responsibility, the Universal Residential Area of Common Responsibility, the Standard Residential Area of Common Responsibility, or the Non-Residential Area of Common Responsibility, or may be a Special Use Area for the benefit of a particular Special Benefited Area.

Chapter 4 Association Members and Voting Rights

4.1. Membership

(a) **Membership Generally.** Any Person holding a membership in the Owners Association is referred to in this Declaration of Community Covenants as a “**Member**”.

Every Parcel Owner is automatically a Member of the Owners Association. However, there shall be only one membership per Parcel. Individual Sub-Unit Owners shall not be considered Members of the Owners Association, but shall act through their respective Parcel Associations.

If a Parcel has more than one Parcel Owner, all co-Owners of the Parcel share the privileges of such membership, subject to reasonable Board regulation and the provisions of this Declaration of Community Covenants and other Governing Documents. Notwithstanding the foregoing, all co-Owners of a Parcel are jointly and severally obligated to perform the responsibilities of a Member.

In addition, during the Declarant Control Period, Declarant, whether or not it owns any Parcel or Sub-Unit, shall automatically be considered a Member of the Owners Association.

If a Parcel Owner (other than a Parcel Association) is a corporation, partnership, limited liability company, or other legal entity, its rights as a Member may be exercised by any officer, director, partner, or trustee, or other individual the Parcel Owner designates from time to time in a writing to the Owners Association’s Secretary.

(b) **Classes and Subclasses of Membership.** The Owners Association shall have the following classes and subclasses of membership.

(i) The “**Residential Class**” of Members, consisting of the following:

(A) the “**General Residential Subclass**” of Members, consisting of (1) the Parcel Owners of Residential Parcels, (2) the Parcel Owners of Mixed Use Parcels, but only with respect to, and to the extent of, Residential Uses and Residential Sub-Units upon such Mixed Use Parcels; and (3) the Parcel Owners of Restricted Residential Parcels, but only with respect to, and to the extent of, Residential Uses upon such Restricted Residential Parcels other than Restricted Residential Projects;

(B) the “**Restricted Residential Subclass**” of Members, consisting of the Parcel Owners of Restricted Residential Parcels, but only for so long as and to the extent that such Parcels are used for such purposes; and

(C) during the Declarant Control Period, the “**Declarant Member**”, consisting of Declarant, whether or not it is a Parcel Owner or Sub-Unit Owner; and

For avoidance of doubt, (A) if all or any part of a Residential Parcel is used for a Restricted Residential Project or affordable dwellings, units or apartments, it shall still be considered a Residential Parcel and its Parcel Owner shall still be considered a member of the General Residential Subclass of Members, unless Declarant or the Board shall modify such Parcel's use designation in accordance with the provisions of Section 7.1(h), (B) if all or any part of a Restricted Residential Parcel is used for Residential Uses other than a Restricted Residential Project, it shall still be considered a Restricted Residential Parcel, but its Parcel Owner shall be considered a member of the General Residential Subclass of Members with respect to such other Residential Uses, and (C) if part of a Restricted Residential Parcel is used for purposes other than Restricted Residential Projects, then Declarant or the Board shall have the right, as set forth in Section 7.1(h) to modify the Use Designation of all or a portion of such Parcel (and thereby modify the Membership Class of the Parcel Owner of such Parcel or any Sub-Units within such Parcel) to conform to the actual use of such Parcel or portion thereof.

(ii) The “**Non-Residential Class**” of Members, consisting of the following:

(A) the “**Commercial Use Subclass**” of Members, consisting of (1) the Parcel Owners of Commercial Parcels, and (2) the Parcel Owners of Mixed Use Parcels, but only with respect to, and to the extent of, Non-Residential Units and Commercial Uses and other Non-Residential Uses (including hotels, motels, Medically Assisted Living Facilities or Non-Medical Living Facilities) upon such Mixed Use Parcels;

(B) the “**Health Care Subclass**” of Members, consisting of the Parcel Owners of Health Care Parcels;

(C) the “**Industrial Subclass**” of Members, consisting of the Parcel Owners of Industrial Parcels;

(D) the “**Community Support Subclass**” of Members, consisting of the Parcel Owners of Community Support Parcels;

(E) the “**Civic Subclass**” of Members, consisting of the Parcel Owners of Civic Parcels, including any Public Utility Parcels;

(F) during the Declarant Control Period, Declarant as the Declarant Member, whether or not it is a Parcel Owner or Sub-Unit Owner.

Unless otherwise specifically provided in a Supplement, the Residential Class of Members does not include the Parcel Owner of any Parcel as to any Medically Assisted Living Facility or Non-Medical Living Facility or any resident of any Medically Assisted Living Facility or Non-Medical Living Facility. With respect to such uses, the applicable Parcel Owner shall instead be a Member of the Health Care Subclass of Members (as to Medically Assisted Living Facilities on any Health Care Parcel), or a Member of the Commercial Subclass of Members (as to Medically Assisted Living Facilities or Non-Medical Living Facilities on any Commercial Parcel or Mixed Use Parcel), a Member of the Industrial Subclass of Members (as

to Medically Assisted Living Facilities or Non-Medical Living Facilities on any Industrial Parcel), or one of the other non-residential subclasses of Members as specified in a Supplement.

(c) **Additional Membership Classes and Subclasses.** Until Declarant's rights to unilaterally expand Koa Ridge expire, Declarant may, by Supplement or amendment to Supplement and with the approval of the Parcel Owners of the affected Parcels, create additional classes or subclasses of membership comprised of the Parcel Owners of property within any portion of the Community or any property being submitted to this Declaration of Community Covenants. Thereafter, the Board may, by Supplement or amendment to Supplement and with the approval of the Parcel Owners of the affected Parcels, create additional classes or subclasses of membership comprised of the Parcel Owners of property within any portion of the Community or any property being submitted to this Declaration of Community Covenants. Declarant or the Board shall specify in any such Supplement or amendment to Supplement the rights, privileges, and obligations of the Members of any class or subclass of membership created by that Supplement, the method for calculating the Equivalent Units assigned to property belonging to such additional class or subclass of membership, the voting rights and assessment obligations of such property and their Owners, and the effect and resulting changes, if any, that such additional classes or subclasses of membership may have on the existing rights, privileges and obligations of the members of any existing class or subclass of membership.

4.2. Voting

(a) **Equivalent Units.** Subject to the provisions of this Section 4.2 and subject also to any limitations on voting set forth in this Declaration of Community Covenants and the other Governing Documents, each Parcel and, as applicable, each Sub-Unit shall be allocated the number of votes corresponding to the number of "**Equivalent Units**" assigned to such Parcel or Sub-Unit in accordance with the formulas and provisions set forth in Exhibit "D" or in a Supplement; provided, however, that any Parcel or Sub-Unit which is exempt from the obligation to pay Base Assessments shall have no votes, and that the number of votes allocated to any Parcel or Sub-Unit which is partially exempt from the obligation to pay Base Assessments shall be reduced in a manner corresponding to the reduction in such Parcel's or Sub-Unit's obligations to pay Base Assessments.

Votes allocated to the Residential Parcels, the Restricted Residential Parcels, the Residential Sub-Units, and Residential Uses on the Mixed Use Parcels are referred to in the Governing Documents as "**Residential Votes.**" Notwithstanding anything to the contrary contained in the Governing Documents, the Restricted Residential Subclass of Members shall be excluded from any votes pertaining solely to the Standard Residential Area of Common Responsibility and expenses, budgets and assessments pertaining to the Standard Residential Area of Common Responsibility.

Votes allocated to the Non-Residential Parcels, Non-Residential Units and the Non-Residential Uses on the Mixed Use Parcels are referred to in the Governing Documents as "**Non-Residential Votes.**"

Declarant shall be assigned the number of votes corresponding to the number of Equivalent Units assigned to the Parcels and Sub-Units that it owns. In addition, during the

Declarant Control Period, and notwithstanding the Declarant Member's exemption from assessments, the Declarant in its capacity as the Declarant Member shall be assigned ten (10) Equivalent Units, to which shall be allocated five (5) Residential Votes and five (5) Non-Residential Votes.

(b) Exercise of Voting Rights. Parcel Owners (and, to the extent specifically provided in this Declaration of Community Covenants, Sub-Unit Owners acting through their Parcel Associations) and the Declarant Member may exercise voting rights as set forth in this Declaration of Community Covenants and the By-Laws.

Subject to Section 4.1(c), if more than one Person is the Parcel Owner of a Parcel (or the Sub-Unit Owner of a Sub-Unit with respect to matters upon which the Sub-Unit Owner is entitled to vote), the vote for such Parcel (or Sub-Unit) shall be exercised in a block as the co-Owners of the Parcel (or Sub-Unit) determine among themselves (i.e., all of the votes of the Parcel on any matter shall be cast in the same direction or for the same option or candidate). Any co-Owner may cast the vote for the Parcel (or Sub-Unit), and agreement of the co-Owners shall be conclusively presumed.

No vote shall be exercised for any Parcel or Sub-Unit exempt from assessment under Section 12.9. Further, in addition to and without limiting Declarant's voting rights, either as the Declarant Member or with respect to Parcels or Sub-Units that Declarant owns, Declarant's consent shall be required for actions of the Board, the membership, and committees, as specifically provided in the Governing Documents.

(c) Parcels Holding Residential and Non-Residential Votes. Any Parcel Owner that holds only Residential Votes with respect to its Parcel and any Parcel Owner that holds only Non-Residential Votes with respect to its Parcel shall exercise its respective votes as a block (i.e., all of the votes of the Parcel on any matter shall be cast in the same direction or for the same option or candidate). If the Parcel Owner is a Parcel Association, such vote shall be exercised by a representative of the board of directors of the Parcel Association in accordance with the Parcel Association's governing documents or, in the absence of provisions addressing the same, as the Parcel Association's board of directors determines.

Except as otherwise provided in this Declaration of Community Covenants, if a Parcel Owner is allocated both Residential Votes and Non-Residential Votes with respect to its Parcel (e.g., a Mixed Use Parcel that contains Residential Sub-Units and Non-Residential Sub-Units), on any matter calling for a vote, (a) the Parcel Owner shall be entitled in the aggregate to (i) Residential Votes equal to the total number of Equivalent Units assigned to such Parcel attributable to Residential Uses and Residential Sub-Units, and (ii) Non-Residential Votes equal to the total number of Equivalent Units attributable to Non-Residential Uses and Non-Residential Sub-Units, and (b) the Parcel Owner shall cast such Residential Votes and Non-Residential Votes each as a block (i.e., block votes will be cast separately for (i) Residential Uses and Residential Sub-Units, and (ii) Non-Residential Uses and Non-Residential Sub-Units). If the Parcel Owner is a Parcel Association, such block votes shall be cast in accordance with the Parcel Association's governing documents (which may require that directors representing Residential Uses and Non-Residential Uses on the Parcel be permitted to separately cast the

votes on behalf of such uses) or, in the absence of provisions addressing the same, as the Parcel Association's board of directors determines.

(d) Votes Concerning Special Benefited Areas and Special Use Areas. When a vote is called for concerning a Special Benefited Area (or the assignment, use, repair, reconstruction, modification or continued operation of a Special Use Area assigned to the Special Benefited Area), each Parcel and Sub-Unit within the Special Benefited Area (or the Special Benefited Area that is benefited by any such Special Use Area) shall be and is hereby allocated the number of votes corresponding to the number of Equivalent Units assigned to such Parcel or Sub-Unit. If all or some Sub-Units within a Parcel belong to a Special Benefited Area, then the votes of the Owners of such Sub-Units shall be cast as a block, acting through their Parcel Association.

PART TWO: IMPROVEMENTS, ACTIVITIES AND USES WITHIN KOA RIDGE

Chapter 5 Improvements and Approval Requirements

5.1. General

(a) **Improvements; Approval Required.** All site work, structures, improvements, landscaping, signage, lighting, utility and communication facilities, and other items placed on any portion of a Parcel in a manner or location visible from outside of any structure (collectively, “**Improvements**”), including modifications, repairs and replacements, are subject to standards for design, landscaping, and aesthetics set forth in or adopted pursuant to this Chapter, including standards set forth in the Design Guidelines for Koa Ridge (“**Design Guidelines**”), and the approval procedures set forth in this Chapter and the Design Guidelines. Unless otherwise exempt pursuant to the terms of this Declaration of Community Covenants, no improvement shall be constructed, installed, modified or maintained upon any Parcel except in accordance with approvals obtained in accordance with this Chapter.

No approval by the Reviewer pursuant to this Chapter is necessary to maintain or repair previously approved Improvements, or to rebuild or restore damaged Improvements in a manner consistent with the plans and specifications most recently approved for such Improvements or to do work that does not cause material change to the exterior appearance of the Improvement. However, the Owner must still comply with all applicable building and zoning codes and other government requirements, and any modifications that are required by such codes or other government requirements shall be subject to the then applicable Design Guidelines and the approval procedures set forth in this Chapter and the Design Guidelines.

Generally, no approval is required for work done to the interior of any structure; however, interior modifications that materially change the exterior appearance of the structure do require prior approval.

(b) **Application to Non-Residential Uses.** Each Owner acknowledges and understands there will be Residential Uses and multiple Non-Residential Uses within the Koa Ridge Community, and that over time as well as during the course of the year there will be changes to the mixture of Non-Residential Uses within Koa Ridge, to the exterior appearance and operation of non-residential buildings and structures and to the signage, lighting, landscaping, parking, and driveway entrances and traffic circulation patterns pertaining or related to Non-Residential Uses, including store and office fronts, windows and displays, and the appearance of retail, commercial, office, medical, industrial or other non-residential buildings, structures and uses. The purpose of this Declaration of Community Covenants and the Design Guidelines, as applied to Non-Residential Uses, is to ensure that such changes are compatible with the Koa Ridge Standard, while providing flexibility regarding the mixture of Non-Residential Uses, the exterior appearance and operation of non-residential buildings and structures, and signage, lighting, landscaping, parking, and driveways and traffic circulation patterns pertaining to Non-Residential Uses. To permit such flexibility, the Design Guidelines may contain differing standards for Residential Uses and Non-Residential Uses and for on-going amendment to the Design Guidelines over time.

(c) Governmental Approvals and Requirements.

(i) The requirements of this Chapter are independent of and in addition to any approvals or reviews required from government agencies or authorities. Approval under this Chapter is not a substitute for any approvals or reviews required by the City and County of Honolulu or any other governmental agency or entity having jurisdiction over architectural or construction matters. Similarly, government reviews and approvals are not substitutes for reviews and approvals required under this Chapter. Approval is required under this Chapter prior to seeking governmental approval for the construction, reconstruction, or renovation of Improvements on a Parcel or for governmental approval of a variance from applicable zoning or other design or construction requirements relating to a Parcel. Any modifications required by any governmental agency or authority to previously approved plans and specifications shall be subject to the review procedures set forth in this Chapter and in the Design Guidelines.

(ii) Each Parcel Owner shall satisfy all requirements of government agencies and authorities for the improvements on its Parcel including any requirements for improvements which are dedicated to or intended to be dedicated to or maintained by governmental agencies or authorities and each Parcel Owner shall be responsible for assuring that such improvements are maintained in compliance with minimum standards for dedication to such governmental agencies or authorities. Declarant shall have the right to require that any improvements within the Area of Common Responsibility meet and be maintained in compliance with government standards for dedication and acceptance by governmental agencies and authorities.

(d) Application to Declarant or Declarant Affiliates. This Chapter shall not apply to Declarant's or Declarant Affiliates' design and construction activities during the Development and Sale Period.

(e) Exempt Property. Declarant or the Board (with the approval of the Declarant during the Development and Sale Period) shall have the right, but not the obligation, from time to time to grant full or partial exemptions from this Chapter or from the Design Guidelines to Civic Parcels (including Public Utility Parcels) and Community Support Parcels.

5.2. Design Review Authority

(a) Declarant. Declarant shall have exclusive authority in its discretion to review and act upon all applications for design review of proposed Improvements until the expiration of the Development and Sale Period. In reviewing and acting upon any request for design approval, Declarant shall have authority to act in its sole discretion.

From time to time, Declarant may delegate any or all of its rights under this Chapter to other Persons or committees, including the Architectural Review Committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to: (i) Declarant's right, in its discretion, to revoke such delegation at any time and reassume its prior control; and (ii) Declarant's right to veto any decision which it determines, solely in its discretion, to be inappropriate or inadvisable. So long as Declarant has any rights under this Chapter, the jurisdiction and authority of others shall be limited to such matters as Declarant specifically delegates.

(b) **Architectural Review Committee.** Upon Declarant's delegation of authority to the Owners Association or upon expiration or termination of Declarant's rights under Section 5.2(a), the Directors shall, as set forth below, appoint an Architectural Review Committee ("**Architectural Review Committee**" or "**ARC**") to assume jurisdiction over matters within the scope of the delegated authority or this Chapter. In addition, the Board may appoint or provide for the appointment of one or more community architects or other appropriate design professionals to assist or otherwise work with the ARC in a manner determined by the Board.

The ARC shall consist of six (6) members, (i) three of which shall be appointed and may be removed and replaced by the Directors elected by the Residential Members (or in the absence of such Directors, shall be appointed and may be removed and replaced by the Declarant) and shall comprise the "**ARC Residential SubCommittee**" of the ARC, and (ii) three of which shall be appointed and may be removed and replaced by the Directors elected or appointed by the Non-Residential Members (or in the absence of such Directors, shall be appointed and may be removed and replaced by the Declarant) and shall comprise the "**ARC Non-Residential SubCommittee**" of the ARC. The ARC may appoint additional subcommittees for such purposes as the ARC may determine appropriate.

The ARC Residential SubCommittee and ARC Non-Residential SubCommittee shall consult with one another but the ARC Residential SubCommittee shall have responsibility and authority on behalf of the ARC to review and approve all Improvements upon Residential Parcels and Restricted Residential Parcels, and the ARC Non-Residential SubCommittee shall have responsibility and authority on behalf of the ARC to review all Improvements upon Non-Residential Parcels. Improvements upon Mixed Use Parcels are subject to the review and approval of the ARC Residential SubCommittee if such Parcels contain Residential Sub-Units or Improvements intended for Residential Uses, and the ARC Non-Residential SubCommittee if such Parcels contain Non-Residential Uses or Improvements intended for Non-Residential Uses.

ARC members need not be Parcel Owners or representatives of Parcel Owners. The ARC may, but need not, include architects, engineers, or similar professionals. The Owners Association may compensate ARC members in such manner and amount as the Board may determine appropriate.

The ARC, ARC Residential SubCommittee and ARC Non-Residential SubCommittee may engage one or more consultants to assist in their review of any proposed Improvements and the performance of their duties, and separate or special consultants may be engaged to assist in the review of different types of projects, Parcels and Improvements (such as, for example, separate consultants for residential and non-residential projects or special consultants to assist in the retail, industrial and medical projects.

Until expiration of Declarant's rights under this Chapter, the ARC shall notify Declarant in writing within five (5) business days of any action (i.e., approval, partial approval, or disapproval) it takes. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have thirty (30) business days after receipt of such notice to veto any such action, solely in its discretion, by written notice to the ARC.

Unless Declarant delegates all or a portion of its reserved rights to the ARC or until Declarant's rights under this Chapter terminate, the Owners Association shall have no jurisdiction over the review and approval of requests for approval of architectural matters under this Chapter. However, the Owners Association may enforce the provisions of this Chapter and the Design Guidelines.

(c) **Reviewer.** For purposes of this Chapter, the entity having jurisdiction in a particular case (whether Declarant, the ARC or other Person or committee to whom Declarant has delegated design review rights) shall be referred to as the "**Reviewer.**"

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals and consultants review any application. The Board may include the compensation of such persons in the Owners Association's Common Expense Budget.

(e) **Construction Deposit.** As a condition of approval of any application hereunder, the Reviewer may require an Owner or applicant to post a construction deposit. The Owners Association shall be entitled to draw upon the construction deposit to cover costs which it incurs to:

(i) clean up dirt, trash or debris, and/or repair damage to the Common Area, the Area of Common Responsibility, or any other Parcel or to any other portions of Koa Ridge which the Board determines, after notice to the Owner or applicant, is attributable to the construction activities of the Owner or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the Owner's Parcel or Sub-Unit; and

(ii) complete any improvements to the Parcel or Sub-Unit, or correct or cure any conditions on the Parcel or Sub-Unit, which the Reviewer determines necessary to conform the Parcel or Sub-Unit to the plans approved pursuant to Section 5.3(b) or to correct drainage or other conditions on the Parcel or Sub-Unit which fail to meet the Koa Ridge Standard or which cause or are likely to cause damage to property outside the Parcel or Sub-Unit, if the Owner fails to do so within a reasonable period of time as set forth in written notice from the Owners Association specifying the action required.

The Owner or applicant shall provide funds to restore the construction deposit to its original amount within ten (10) days after written request from the Board notifying the Owner or applicant of the amount of any disbursement from the Owner's or applicant's construction deposit. Upon final inspection and approval of the completed construction, the Owners Association shall refund the amount of such construction deposit (without interest), less any funds expended by the Owners Association pursuant to this Section 5.2(e) and not restored by the Owner or applicant.

5.3. Guidelines and Procedures

(a) **Design Guidelines.** Declarant will prepare initial Design Guidelines, which contain general provisions applicable to all of Koa Ridge, and may amend the Design Guidelines

as provided in this Declaration of Community Covenants. The Design Guidelines may contain specific provisions that may vary among uses, Parcel size and configuration, Parcel Use Designations, topography and other physical features, locations within the Community, availability and proximity to infrastructure and utility services, neighboring uses and Use Designations, or other factors. The Design Guidelines may also include variations based on different features of the Master Plan, traffic patterns, and the master drainage plan for the Community. The Design Guidelines may also incorporate all or selected portions of the Sustainability Plan, and in the exercise and performance of their respective rights, duties and obligations under the Governing Documents, the Reviewer, Declarant and/or Board may interpret and apply the Design Guidelines to comply with, implement and further the goals of the Sustainability Plan as they in their discretion determine appropriate under the circumstances. The Design Guidelines are intended to provide guidance to Owners and architects regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the literal requirements of the Design Guidelines does not guarantee approval.

The Design Guidelines may also contain provisions setting forth policies and procedures for the submittal and processing of applications for Improvements that are subject to review, and policies regarding the terms and conditions of approvals granted by the Reviewer. The Design Guidelines may also contain provisions setting forth the manner in which the ARC or Reviewer will operate, including internal governance procedures for the ARC or Reviewer.

Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the ARC, unless Declarant also delegates the power to amend the Design Guidelines to the Board. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines.

The Residential Committee may recommend modifications to the specific provisions of the Design Guidelines that apply to the Residential Parcels and Restricted Residential Parcels, and the Non-Residential Committee may recommend modifications to the specific provisions of the Design Guidelines that apply to the Non-Residential Parcels. The Residential Committee and the Non-Residential Committee may together recommend modifications to the specific provisions of the Design Guidelines that apply to the Mixed Use Parcels, or to the Community in general.

Amendments to the Design Guidelines shall apply prospectively only. Amendments shall not require modifications to or removal of any Improvements previously approved. However, any new work on such Improvements (including modifications, but excluding the maintenance or repair of previously approved Improvements, and also excluding the rebuilding or restoration of damaged Improvements in accordance with previously approved plans and specifications) must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Owners upon request. The Reviewer may charge a reasonable fee to cover its reproduction cost.

(b) Procedures. Unless the Design Guidelines provide otherwise, no sitework or modification or construction of any Improvement may begin on any Parcel until the design of such Improvement is approved in writing by the Reviewer. A written application for design approval may be required and, in such case, must be accompanied by plans and specifications, which shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it in its discretion deems relevant, including, without limitation, the Koa Ridge Standard, aesthetic considerations, harmony of the proposed external design with surrounding structures and environment, drainage patterns and improvements, traffic patterns, effect on the Community as a whole, and compliance with the Governing Documents. Each Owner acknowledges that such determinations may be purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements or any portion of any Improvement. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to the dispute resolution procedures set forth in Chapter 21 or judicial review so long as they are made in good faith and in accordance with procedures required or authorized under this Chapter or the Design Guidelines.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information and within such time period, if any, as may be set forth in the Design Guidelines. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

As part of any approval, the Reviewer may in its discretion require that construction commence or be completed within a specified time period or that certain construction milestones be achieved within a specified schedule. If construction does not commence or is not completed within the required period, the approval shall expire, and the Owner must reapply for approval before commencing or continuing any activities. If any applicant fails to achieve construction milestones as specified by the Reviewer, the Reviewer shall have the right to revoke or modify its approval, or impose additional conditions to be satisfied by the applicant, including without limitation requiring or increasing the amount of any construction deposit as described in Section 5.2(e). Once construction is commenced, it shall be diligently pursued to completion.

The Reviewer may exempt certain activities from the application and approval requirements of this Chapter if such activities are undertaken in compliance with the Design Guidelines, the Koa Ridge Standard and the Governing Documents.

(c) **Appeals Process.** Until such time as the Declarant no longer has review authority under Section 5.2(a) or the Declarant has delegated authority to appoint the ARC to the Owners Association, an applicant may request in writing that the Declarant (or Reviewer appointed by Declarant) reconsider its decision, but the Declarant's decision shall be final and conclusive and shall not be subject to appeal. After Declarant no longer has review authority under Section 5.2(a) or the Declarant has delegated authority to appoint the ARC to the Owners Association and in either such event following the Board's appointment of the ARC, an applicant may appeal any decision of the ARC to the Board (including any disapproval by the ARC or any approval conditions imposed by the ARC).

To request an appeal of any decision by the ARC (once the Declarant no longer has review authority or has delegated such authority to the ARC), the applicant must submit to the ARC and to the Owners Association's Secretary (or other representative of the Owners Association designated by its President), within such time period, if any, as may be set forth in the Design Guidelines, a copy of the original application, the notification of the ARC's decision (including notice of disapproval or conditions of approval), and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for the ARC's decision listed in the ARC's notification of decision.

The Board may: (i) affirm the ARC's decision; (ii) affirm a portion and overturn a portion of the ARC's decision; (iii) remand all or portions of the ARC's decision for further action; or (iv) overturn the ARC's entire decision. The Board shall notify the applicant and the ARC in writing of its decision after its receipt of the request for appeal with all required information and within such time period, if any, as may be set forth in the Design Guidelines. If the ARC's decision is remanded or overturned in whole or in part, the Board's decision shall include a description of its reasons for remand or overturning the ARC's decision. During the appeal process the Parcel Owner shall not commence or continue any work requiring approval hereunder. Once an appeal has been acted on by the Board, additional appeals for the same or similar matter shall not be accepted.

5.4. No Waiver of Future Approvals

The individuals reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, effect on the Community, and interpretation and application of the Master Plan, the Design Guidelines and Governing Documents, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. While the Reviewer may permit Improvements constructed in accordance and in conformity with plans it previously has approved to remain in place, it may refuse to approve similar proposals from the same or different Owners in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

The Reviewer may in its discretion authorize variances from compliance with the Design Guidelines when it determines that circumstances (including without limitation circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations),

justify such a variance; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration of Community Covenants; or (c) prevent the Reviewer from denying a variance in other similar or different circumstances.

5.6. Limitation of Liability

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics, appearance and operation of Koa Ridge and to assist in the implementation of the Governing Documents. Review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations, compliance with the Governing Documents and/or other factors which the Reviewer, in its discretion, deems relevant. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. While the Reviewer may consider the provisions of the Governing Documents in its review and approval of any application, it is the Owner's responsibility to observe and perform all terms and conditions of the Governing Documents and other applicable requirements, and (a) the Reviewer's approval of any Improvement shall in no manner constitute a representation or approval by the Reviewer or Owners Association of compliance with the Governing Documents, building code or other legal or applicable requirements, or waiver of rights or remedies of the Owners Association, Declarant, or any other party to enforce such compliance, and (b) the Reviewer assumes no responsibility for the failure of any Parcel Owner or Sub-Unit Owner to adhere to the provisions of the Governing Documents, building code or other legal or applicable requirements.

Declarant, Declarant Affiliates, the Owners Association, its officers, the Board, the ARC, any committee, and any member of any of the foregoing shall not be liable for and assume no responsibility for, and Parcel Owners and Sub-Unit Owners specifically waive all claims relating to: (a) soil conditions, drainage, or other general site work; (b) defects in plans reviewed or approved hereunder or the failure of any Owner to comply with the provisions of the Governing Documents, building code or other legal or applicable requirements, or the accuracy or completion of construction in accordance with such plans; (c) loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; (d) injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on, or modifications to, any Parcel or Sub-Unit, including, without limitation, injury, damage, or loss relating to the structural integrity or soundness of approved construction or modifications; (e) loss or damage relating to the economic viability of any business or enterprise operated on a Parcel or in a Sub-Unit; or (f) failure of any Owner in any instance to comply with the Governing Documents.

In all matters relating to actions taken by the Owners Association pursuant to this Chapter, the Owners Association shall defend and indemnify Declarant, the Board, the ARC, and the various committees of the Owners Association, and members of each, as provided in the By-Laws, except with respect to the grossly negligent or willful misconduct of the indemnified party.

Chapter 6

Maintenance, Repair, and Replacement

6.1. Maintenance by Owners

Each Parcel Owner shall maintain its entire Parcel, including all structures, landscaping, and other Improvements within the Parcel, and shall maintain or cause all Sub-Units within its Parcel to be maintained, in a safe, clean, neat, and attractive manner, in good condition and repair, free of trash and debris, and consistent with the Governing Documents, the Koa Ridge Standard, and all applicable legal and regulatory requirements, unless such maintenance responsibility is otherwise assumed by or assigned to the Owners Association pursuant to this Declaration of Community Covenants, any Supplement, or pursuant to applicable law. Each Sub-Unit Owner shall similarly maintain (or cause its Parcel Association to maintain) the exterior portions of its Sub-Unit.

In addition, a Supplement may provide that a Parcel Owner is obligated to maintain designated portions of its Parcel in a prescribed manner for the benefit of all or portions of Koa Ridge (e.g., community signage). A Supplement may also provide that a Parcel Owner is obligated to maintain improvements which are dedicated or intended to be dedicated to or maintained by governmental agencies or authorities or which are part of the Area of Common Responsibility so as to comply with minimum standards for dedication to governmental agencies or authorities.

6.2. Maintenance by the Owners Association

As further described in this Section 6.2 and in Chapter 9, the Owners Association shall maintain the Area of Common Responsibility in a manner consistent with the Master Plan, the Governing Documents, the Koa Ridge Standard, and all applicable legal and regulatory requirements.

Declarant or the Board (with Declarant's consent during the Development and Sale Period) may designate the portion of any Parcel, or areas within such portion, between the predominant Improvements on the Parcel and any street within Koa Ridge as an Area of Common Responsibility and require that the Owners Association be responsible for maintaining, as a Common Expense, streetscapes, common sidewalks, and landscaping within such area. Declarant or the Board (with Declarant's consent during the Development and Sale Period) may also designate all or portions of roadways, median and planting strips and public rights-of-way within or in the vicinity of Koa Ridge, whether or not dedicated to and/or accepted by a government authority (and notwithstanding any delays in formal dedication of such properties), as an Area of Common Responsibility and require that the Owners Association be responsible for maintaining, as a Common Expense, such roadways, median and planting strips and public rights-of way and the landscaping and improvements thereon to standards consistent with the Koa Ridge Standard and, as and to the extent required by the Declarant, in condition sufficient to dedicate such roadways or public rights-of way to the City & County of Honolulu or the State of Hawaii, as the case may be. Neither the Owners Association nor any Owner or Parcel Association shall install, alter or remove any Improvement, pavement, curb, driveway, drainage improvement, grading, tree, shrub, groundcover or other vegetation in or from such roadways,

median and planting strips or public rights-of-way or areas between the street and the predominant improvements of any Parcel without prior approval pursuant to Chapter 5.

The Owners Association shall also assume maintenance responsibility for other parts of any Parcel, upon designation of such areas as a portion of the Area of Common Responsibility.

In addition, upon the Board's determination of any violation of this Declaration of Community Covenants or that the level and quality of maintenance then being provided on a Parcel or Sub-Unit is not consistent with the Koa Ridge Standard, this Declaration of Community Covenants or an applicable Supplement, and after notice and an opportunity to cure if and as provided in Section 8.2, the Owners Association may perform such work or maintenance on a Parcel or Sub-Unit as is needed to correct such violation or deficiency in maintenance and assess the costs of providing such work or maintenance against the Parcel Owner and as applicable against the Sub-Unit Owner. The Owners Association will endeavor to treat all similarly situated Parcels or Sub-Units the same. However, each determination and the performance of work or maintenance as to any Parcel or Sub-Unit shall be made and performed on a case-by-case basis.

6.3. Responsibility for Repair and Reconstruction

(a) Scope of Maintenance Responsibility. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair, replacement, and reconstruction as necessary to maintain the property to a level consistent with the Koa Ridge Standard and in compliance with the Governing Documents.

(b) Obligation to Repair and Reconstruct. The development and uses of the various Parcels within Koa Ridge are interdependent. As such, each Parcel Owner covenants and agrees to repair or reconstruct damaged Improvements on its Parcel in a manner consistent with the most recent approved plans and specifications for such Improvements, or with modifications approved in accordance with Chapter 5. Each Sub-Unit Owner shall similarly repair or reconstruct (or cause its Parcel Association to repair or reconstruct) the Improvements within its Sub-Unit. The Parcel Owner or Sub-Unit Owner (or its Parcel Association) shall commence repairs or reconstruction no later than six months after any damage and diligently pursue such repair or reconstruction to completion. The Board, in the exercise of its reasonable discretion, may extend or limit the time requirement for the commencement of repairs or reconstruction after taking into consideration the extent of damages, the Owner's recovery of insurance proceeds, financing, design and permitting issues, and other relevant factors. The Parcel Owner or Sub-Unit Owner (or its Parcel Association) shall pay any costs that insurance proceeds do not cover.

(c) Enforcement Rights. In the event an Owner fails or refuses to repair or reconstruct an Improvement on its Parcel or Sub-Unit in accordance with this Declaration of Community Covenants, the Owners Association, after notice and an opportunity to cure if and as provided in Section 8.2, shall be authorized to: (i) enter the Parcel or Sub-Unit and repair the damage or demolish the damaged or destroyed structure or other Improvement; (ii) remove all debris associated with such repair or demolition; and (iii) sod, pave, or otherwise landscape the

area in a manner consistent with the Koa Ridge Standard. The Owners Association's costs incurred in connection with its actions under this sub-section shall be assessed against the Parcel and the Parcel Owner and if applicable against the Sub-Unit and Sub-Unit Owner as a Specific Assessment under Section 12.4.

(d) Equivalent Units. If any improvement on a Parcel or Sub-Unit is damaged or destroyed, then until such improvements are repaired, rebuilt or replaced, the Parcel or Sub-Unit shall continue to be assigned the number of Equivalent Units for assessment and voting purposes as were assigned to the Parcel or Sub-Unit immediately prior to such damage or destruction, subject to any changes as provided in Exhibit "D" or in a Supplement.

Chapter 7

Use and Conduct

7.1. Use Restrictions and Parameters

(a) General Use Restrictions.

(i) **Residential Parcels.** Subject to the provisions of Section 7.1(h) below, each Residential Parcel and each Sub-Unit on a Residential Parcel shall be improved and used solely for residential uses, including free standing homes, townhouses, residential condominium units, and residential apartments and dwellings, whether single-family or multi-family and whether attached or detached, including Restricted Residential Projects and affordable dwellings, units and apartments, but specifically excluding (A) Medically Assisted Living Facilities and Non-Medical Living Facilities, (B) hotels, motels, vacation rentals, timeshares and similar uses as described in Section 7.1(d), and (C) other uses prohibited under this Declaration of Community Covenants (all such permitted uses, including Restricted Residential Projects and affordable dwellings, units and apartments, being referred to herein as “**Residential Uses**”), and for such other purposes as permitted under this Section. No Residential Parcel shall be developed or used for more than the maximum number of dwelling units specified in the Supplement(s) applicable to such Parcel. Subject to the provisions of Section 7.1(h), no Residential Parcel or Sub-Unit on a Residential Parcel may ever be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending, or other such non-residential purposes, except Declarant, Declarant’s Affiliates and Parcel Developers may use any portion of a Residential Parcel or Sub-Unit on a Residential Parcel for development functions and model home sites and display and sales offices in accordance with Section 13.5 and Section 18.8. The provisions of this Section do not preclude professional or similar home occupations without external evidence thereof, provided that all of the following conditions are fulfilled: (i) such home occupation uses are ancillary to the primary Residential Uses, (ii) each such home occupation activity is conducted in conformance with all applicable governmental ordinances and do not include the excluded activities described in clauses (A), (B) or (C) of the first sentence of this subsection; (iii) the patrons or clientele of each such home occupation do not regularly visit the Residential Parcel or Sub-Unit or habitually park their vehicles on the public streets or Area of Common Responsibility within Koa Ridge in connection with such home occupation; (iv) all activity with respect to each such home occupation is consistent with and does not change the residential character of the Residential Parcel or its surrounding neighborhood, and does not adversely affect surrounding Parcels or Sub-Units, (v) the existence or operation of each such home occupation is not apparent or detectable by sight, smell, sound or other means from outside of the boundaries of the Residential Parcel or Sub-Unit where it is being conducted; (vi) no such home occupation shall increase the liability or casualty insurance obligation or premium of the Owners Association; and (vii) each such home occupation conforms to the Koa Ridge Standard and the provisions of the Governing Documents. All or any portion of a Residential Parcel may be used as a Restricted Residential Project, but such Parcel shall still be considered a Residential Parcel (and its Parcel Owner shall still be considered part of the General Residential Subclass of Members) unless Declarant or the Board shall modify the Use Designation for all or a part of such Parcel in accordance with

the provisions of Section 7.1(h). Residential Parcels and Sub-Units on Residential Parcels may also be used for purposes specified in a Supplement and for other purposes approved by Declarant during the Declarant Control Period and thereafter by the Board.

(ii) **Restricted Residential Parcels.** Subject to the provisions of Section 7.1(h) below, each Restricted Residential Parcel and Sub-Unit on a Restricted Residential Parcel shall be used and improved solely for Restricted Residential Projects (such uses for Restricted Residential Projects on Restricted Residential Parcels being referred to herein as “**Restricted Residential Uses**”). Restricted Residential Parcels and Sub-Units on Restricted Residential Parcels may also be used for purposes specified in a Supplement and for other purposes approved by Declarant during the Declarant Control Period and thereafter by the Board. No Restricted Residential Parcel shall be developed or used for more than the maximum density permitted it under a Supplement.

(iii) **Commercial Parcels.** Subject to the provisions of Section 7.1(h) below, each Commercial Parcel and Sub-Unit on a Commercial Parcel shall be improved and used solely for retail and general office purposes, for consumer services in support of residential, retail and office uses (such as, by way of example, doctors’ offices and medical clinics, dentists offices, veterinary services, accountants and lawyers offices, social welfare and counseling services, family planning clinics, and barbershops, beauty salons and spas, and pharmacies), for dining, recreation and entertainment, for conditional uses approved in accordance with Section 7.1(g) below, and for purposes incidental to and in support of retail and office uses as approved by Declarant during the Declarant Control Period and thereafter by the Board (all such uses being referred to herein as “**Commercial Uses**”), and for such other purposes as may be permitted under this Section. Commercial Parcels and Sub-Units on Commercial Parcels may also be used for purposes specified in a Supplement, for hotels, motels, timeshares, vacation rentals and similar operations approved in accordance with the provisions of Section 7.1(d) and for other purposes approved by Declarant during the Declarant Control Period and thereafter by the Board. No Commercial Parcel shall be developed or used for more than the maximum density permitted it under a Supplement.

(iv) **Mixed Use Parcels.** Subject to the provisions of Section 7.1(h) below, each Mixed Use Parcel and Sub-Unit on a Mixed Use Parcel shall be improved and used solely for purposes permitted for, and subject to the limitations applicable to, Residential Parcels and Commercial Parcels, for conditional uses approved in accordance with Section 7.1(g) below, and for hotels, motels, timeshares, vacation rentals and similar operations approved in accordance with the provisions of Section 7.1(d). No Mixed Use Parcel shall be developed or used for more than the maximum density permitted it under a Supplement.

(v) **Health Care Parcels.** Subject to the provisions of Section 7.1(h) below, each Health Care Parcel and Sub-Unit on a Health Care Parcel shall be improved and used solely for hospital facilities, medical office facilities, outpatient facilities, diagnostic facilities, other facilities that are customarily used in the provision of health care services, and for purposes incidental to and in support of medical and health care uses as approved by Declarant during the Declarant Control Period and thereafter by the Board (all such uses being referred to herein as “**Medical Uses**”), and for such other purposes as may be

permitted under this Section. Health Care Parcels and Sub-Units on Health Care Parcels may also be used for purposes specified in a Supplement, for hotels, motels, timeshares, vacation rentals and similar operations approved in accordance with the provisions of Section 7.1(d), and for other purposes approved by Declarant during the Declarant Control Period and thereafter by the Board. Except for incidental purposes approved as above described or specified in a Supplement, no Health Care Parcel shall be used for non-health care related purposes. If approved by Declarant during the Declarant Control Period and thereafter if approved by the Board, Health Care Parcels may be used for chronic medical care living facilities, hospices, and assisted living and care facilities that are primarily medical in nature (such uses being referred to herein as “**Medically Assisted Living Facilities**”), but no Health Care Parcel shall be used for retirement homes, group homes or adult residential care homes which are not primarily medical in nature (“**Non-Medical Living Facilities**”). No Health Care Parcel shall be developed or used for more than the maximum density permitted it under a Supplement.

(vi) **Industrial Parcels.** Subject to the provisions of Section 7.1(h) below, each Industrial Parcel and Sub-Unit on an Industrial Parcel shall be improved and used solely for light industrial purposes, for conditional uses approved in accordance with Section 7.1(g) below, and for purposes incidental to and in support of light industrial uses as approved by Declarant during the Declarant Control Period and thereafter by the Board (all such uses being referred to herein as “**Industrial Uses**”). Industrial Parcels and Sub-Units on Industrial Parcels may also be used for purposes specified in a Supplement, and for other purposes approved by Declarant during the Declarant Control Period and thereafter by the Board. No Industrial Parcel shall be developed or used for more than the maximum density permitted it under a Supplement.

(vii) **Community Support Parcels.** Subject to the provisions of Section 7.1(h) below, each Community Support Parcel and Sub-Unit on a Community Support Parcel shall be used and improved solely for community support uses as specified in a Supplement or approved by Declarant during the Development and Sale Period and thereafter by the Board (such uses being referred to herein as “**Community Support Uses**”).

(viii) **Civic Parcels.** Subject to the provisions of Section 7.1(h) below, each Civic Parcel and Sub-Unit on a Civic Parcel shall be used and improved by public utilities and government authorities solely for the civic uses specified in a Supplement or approved by Declarant during the Development and Sale Period and thereafter by the Board (such uses being referred to herein as “**Civic Uses**”).

In addition to the foregoing general use restrictions, the improvement and use of each Parcel and Sub-Unit shall be subject to other provisions of this Declaration of Community Covenants and the provisions of the Design Guidelines, Rules and other Governing Documents.

As used herein, “**Non-Residential Uses**” shall refer to all uses and activities permitted under this Declaration of Community Covenants other than Residential Uses.

(b) Leasing. The terms “lease” and “leasing” shall refer to the regular, exclusive occupancy of a Parcel or Sub-Unit or any portion of a Parcel or Sub-Unit by any Person other than the Parcel Owner or Sub-Unit Owner, for which the Parcel Owner or Sub-Unit Owner receives any consideration or benefit. Nothing in this Declaration of Community Covenants shall be deemed to prevent a Parcel Owner or Sub-Unit Owner from, or require the approval of the Board for: (a) selling its Parcel or Sub-Unit; or (b) leasing or renting all of such Parcel or Sub-Unit, subject the provisions of this Section, and no Rule shall prohibit leasing or transfer of any Parcel or Sub-Unit, or require consent of the Owners Association or Board for leasing or transfer of any Parcel or Sub-Unit in compliance with the provisions of this Declaration of Community Covenants; provided that, except for hotels, motels, timeshare units, vacation rentals and similar uses approved in accordance with the provisions of Section 7.1(d), the Declarant during the Declarant Control Period, and thereafter the Board may require a minimum lease term of not less than thirty (30) days.

All leases shall be in writing and shall disclose that the tenants and all Occupants of the leased Parcel or Sub-Unit are bound by, and obligated to comply with, the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Each Owner is responsible for providing its tenants with copies of the Governing Documents and ensuring that its tenants observe and perform all applicable terms and covenants of the Governing Documents. In addition, Declarant, the Owners Association, the Board, the Residential Committee and Non-Residential Committee may adopt Rules governing leasing and subleasing as herein provided. Upon request, each Owner shall provide the Board written notice of the name of each tenant within its Parcel or Sub-Unit and such other information about the tenant as the Board may reasonably require.

(c) Subdivision and Combination of Parcels; Condominium Property Regimes. No Person other than Declarant, Declarant Affiliates, or other Persons authorized by Declarant shall combine, subdivide or change the boundary lines of any Parcel or submit any Parcel to a condominium property regime without the prior written approval of Declarant during the Development and Sale Period (which it may give or withhold in its discretion), and thereafter without Board’s prior written approval (exercised in accordance with its reasonable judgment). In reviewing any request for approval, Declarant or the Board, as applicable shall consider such factors as it determines to be relevant, including compliance with the Governing Documents, the Master Plan, and the Koa Ridge Standard, impacts on the Koa Ridge Community and the effects of the proposed action on the governance and management of the Owners Association’s affairs. As a condition to any such approval, Declarant or the Board, as applicable may require that that the lots, condominium units and/or other real property interests resulting from the proposed action be designated as separate Parcels and/or assigned separate Use Designations. Any such action to combine, subdivide or change the boundary line of any Parcel or subject any Parcel to a condominium property regime that Declarant or the Board approves shall be effective only upon recording of a Supplement or other legal instrument reflecting the subdivision or new boundaries of the affected Parcel(s).

During the Development and Sale Period, Declarant shall also have the unilateral right to divide or change the boundaries of any Parcel or to combine any two or more Parcels in

accordance with the provisions of Section 18.3. Thereafter, the Board of Directors shall have the right, with the consent of the Parcel Owner(s) of the affected property, to divide or change the boundaries of any Parcel or to combine any two or more Parcels. Any such division, amendment, modification or combination shall be set forth in a Supplement executed and recorded by Declarant or the Board, as applicable.

(d) Hotels, Motels, Vacation Rentals and Timeshares. No Residential Parcel, Restricted Residential Parcel, Community Support Parcel, Industrial Parcel, or Civic Parcel, portion of any such Parcel, Sub-Unit on any such Parcel, or portion of any Sub-Unit on any such Parcel shall be used for vacation rentals or as a hotel or motel, or for operation of a timesharing, fraction-sharing, interval exchange, or similar program, or placed in use as part of a private residence, destination, vacation, or similar club program or arrangement, whereby exclusive use of the Parcel or Sub-Unit is made available to participants in the program, club, or arrangement either on a fixed or floating time schedule over a period of years or on a first come, first served basis. This prohibition is intended to be broadly construed and to cover plans such as those described, whether or not the plan is covered by Hawaii Revised Statutes (“HRS”) Chapter 514E, as amended from time to time, or any successor statute. All or portions of a Mixed Use Parcel, Health Care Parcel, or Commercial Parcel may be used for vacation rentals, hotels, motels or such programs, clubs or arrangements, as authorized or approved by Declarant during the Declarant Control Period and thereafter by the Board.

(e) Quiet Enjoyment. No Person may use or permit the use of any portion of Koa Ridge, including any Parcel, in any way or for any purpose which may endanger the health or safety of, or unreasonably annoy or disturb, the Parcel Owners, Sub-Unit Owners, or the Occupants of any Parcel or Sub-Unit, or in such a way as to constitute, in the sole opinion of the Board, a nuisance, an unreasonable source of annoyance or a hazardous or offensive activity or use.

This restriction is not intended to prohibit normal and customary activities associated with permitted Residential Uses or Non-Residential Uses, including, without limitation, barbecue and entertainment areas and outdoor music systems in outdoor seating areas; provided, the Board may adopt reasonable Rules imposing limitations on, among other things, hours of operation or use, noise levels, and lighting associated with uses on the Parcels and Sub-Units.

(f) Prohibited Uses. In addition to uses that are restricted by zoning or the Master Plan, the following uses are prohibited within Koa Ridge, except as otherwise specifically permitted or provided in a Supplement:

(i) trailer courts, mobile home parks, and facilities for the sales or service of mobile homes or trailers;

(ii) use of tents or non-permanent structures for human habitation, except that recreational campgrounds and housing assistance programs may be permitted as conditional uses as provided in Section 7.1(g), and except that recreational camping not visible from any private or public street and for periods no longer than three (3) consecutive days and for no more than five (5) days in any calendar month shall be permitted on Residential Parcels;

- (iii) commercial mining and quarry operations;
- (iv) junkyards, scrap metal yards, sanitary landfills, automobile used parts sales facilities, and motor vehicle dismantling operations;
- (v) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage or refuse of any nature, provided that salvage businesses, the handling or reducing of waste produced within the Community and recycling centers may be permitted as conditional uses as provided in Section 7.1(g);
- (vi) stockyards and the slaughtering of animals and the processing of animal products;
- (vii) commercial production of compost or fertilizers;
- (viii) tanning parlors, massage parlors, and any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;
- (ix) “adult entertainment uses,” which shall include, for the purposes of this Declaration of Community Covenants, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated “X” by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel or motel); or (B) sexually explicit games, toys, devices, or similar merchandise;
- (x) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the refining of petroleum;
- (xi) dry cleaning plants, provided that facilities for drop-off or pick-up of items dry cleaned outside of Koa Ridge are permitted;
- (xii) cemeteries and crematoriums, provided that funeral homes and mortuaries may be permitted as conditional uses as described in Section 7.1(g);
- (xiii) wood treating operations or facilities;
- (xiv) engine and motor repair facilities (except as ancillary to vehicle sales dealerships, gasoline and vehicle fueling stations or automobile repair or service facilities which have been approved as conditional uses as described in Section 7.1(g));
- (xv) jails and correctional facilities;

(xvi) any use which would cause or threaten the cancellation of any insurance maintained by the Owners Association, or which would increase insurance rates for any insurance maintained by the Owners Association or Parcel Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan.

In addition to the above, Declarant during the Development and Sale Period and thereafter the Board, may prohibit any use which it determines would be inconsistent with the Master Plan or the Koa Ridge Standard or otherwise incompatible with Koa Ridge.

During the Development and Sale Period, Declarant shall determine, in its reasonable discretion, whether proposed uses or users are consistent with the standards and conditions set forth above. Thereafter, the Board, in the exercise of its reasonable judgment, shall make such determinations.

(g) Conditional Uses. Except as otherwise permitted, prohibited or provided in a Supplement, the following uses may be permitted within the Commercial Parcels, Industrial Parcels, and Mixed Use Parcels with the approval of, and subject to the conditions imposed by, the Declarant during the Development and Sale Period and, thereafter, the Board, which approval shall be based upon a determination that such use (1) is in compliance with, or does not violate, the Master Plan, the Koa Ridge Standard, the Governing Documents, and the general scheme of development for Koa Ridge, (2) will not have significant adverse impact (noise, visual, aesthetic or otherwise) on neighboring properties that cannot be reasonably addressed or mitigated, and (3) is not an inappropriate use considering adjacent and nearby properties and uses:

(i) Medically Assisted Living Facilities or Non-Medical Living Facilities; provided that Medically Assisted Living Facilities shall be permitted on Health Care Parcels in accordance with the provisions of Section 7.1(a)(v);

(ii) convention centers or meeting facilities (other than as part of schools, churches or places of worship) with capacity of more than one hundred (100) participants;

(iii) amusement parks, gaming arcades, carnivals, fairs, or similar amusement activities and uses;

(iv) schools, churches and places of worship, or day care facilities; provided that such uses and activities on Community Support Parcels and Civic Parcels shall be permitted as and to the extent permitted in Section 7.1(a);

(v) housing or meal assistance programs such as soup kitchens or homeless camps or shelters;

(vi) recycling centers, or the handling or reduction of waste produced within the Community, provided that (A) such uses and activities on Community Support Parcels and Civic Parcels shall be permitted as and to the extent permitted in Section 7.1(a); and (B) recycling centers may be permitted anywhere within Koa Ridge with the approval of, and subject to the conditions imposed by, the Declarant during the Development and Sale Period and, thereafter, the Board;

(vii) thrift stores, consignment shops, or stores concentrating on the sale of discounted items or excess inventory;

(viii) tattoo or body piercing shops;

(ix) vehicle sales dealerships and automobile specialty shops and boutiques (with any one dealership, store or boutique not to exceed 10,000 square feet) which display only a limited number of automobiles on-site at any particular time;

(x) gasoline and vehicle fueling stations;

(xi) automobile repair or service facilities;

(xii) gun clubs or shooting ranges;

(xiii) recreational campgrounds or recreational vehicle campgrounds;

(xiv) bars (including karaoke bars), night clubs, dance clubs, cabarets, and lounges or establishments that sell or serve alcoholic beverages or allow customers to bring alcoholic beverages on the premises for consumption, provided that this subsection shall not prohibit or require conditional use approval for establishments that sell, provide or allow the consumption of alcoholic beverages as a product or service which is incidental and ancillary to their primary permitted businesses (e.g., permitted restaurants), to the extent that such businesses are permitted under Section 7.1(a);

(xv) salvage businesses, provided that such uses and activities as conditional uses under this Section shall only be permitted upon an Industrial Parcel, and provided, further, that this subsection shall not prohibit or require conditional use approval for Owners Association sponsored or sanctioned events or activities on the Area of Common Responsibility (such as, without limitation, craft fairs, arts festivals, or farmers markets);

(xvi) wind machines, wind farms or facilities or equipment for the generation of electrical power from the wind;

(xvii) potable or nonpotable water production facilities or facilities for treatment of wastewater;

(xviii) power generation or other utility installations providing services to Parcels other than the one on which such installations are located;

(xix) bus terminals or transportation facilities, provided that (A) such uses and activities on Community Support Parcels and Civic Parcels shall be permitted as and to the extent permitted in Section 7.1(a); and (B) such uses and activities may be permitted anywhere within Koa Ridge with the approval of, and subject to the conditions imposed by, the Declarant during the Development and Sale Period and, thereafter, the Board;

(xx) truck terminals or truck stop-type facilities, including truck parking lots, provided that such uses and activities as conditional uses under this Section shall only be permitted upon an Industrial Parcel, and provided, further, that this subsection shall not prohibit or require conditional use approval for the parking of trucks which is incidental and ancillary to a primary permitted business, to the extent that such business is permitted under Section 7.1(a);

(xxi) mini-warehouses or warehouse/distribution centers, provided that such uses and activities as conditional uses under this Section shall only be permitted upon an Industrial Parcel;

(xxii) consumer household and office storage facilities;

(xxiii) commercial food processing or commercial production of food products; provided that such uses and activities as conditional uses under this Section shall only be permitted upon Industrial Parcels;

(xxiv) kennels or facilities for the breeding of animals or the raising of animals for commercial purposes;

(xxv) plant nurseries or production of agricultural and plant products, provided that such uses and activities as conditional uses under this Section shall only be permitted upon Industrial Parcels;

(xxvi) mortuaries or funeral homes, provided that such uses and activities as conditional uses under this Section shall only be permitted upon Industrial Parcels or Commercial Parcels; and

(xxvii) heavy machinery sales or storage facilities, provided that such uses and activities as conditional uses under this Section shall only be permitted upon Industrial Parcels.

(h) Changes in Use. Each Parcel Owner and each Sub-Unit Owner acknowledges and agrees that Koa Ridge, while containing a multitude of diverse uses which may change over time, is intended as a coordinated and cohesive development in which the various uses relate to each other and co-exist in a complementary manner. As such, during the Development and Sale Period, any change in the Use Designation or permitted use of all or any portion of a Parcel shall require Declarant's prior written approval, which may be given or withheld in the Declarant's discretion. After termination of the Development and Sale Period, any such change shall require the written consent of the Board, which consent shall not unreasonably be withheld, conditioned, or delayed. In addition, Declarant shall have the right in its discretion during the Development and Sale Period, and the Board shall thereafter have the right in the exercise of its reasonable judgment, to modify the Use Designation or permitted uses of all or any portion of any Parcel (and thereby the Membership classes or subclasses of the Owners of such Parcel or Sub-Units within such Parcel) in a Supplement to reflect the actual use of such Parcel.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern Koa Ridge. The initial Rules attached as Exhibit “C” are a part of that framework. However, within that framework, the Owners Association must be able to respond to unforeseen issues and changes affecting Koa Ridge. Therefore, Declarant, the Board and the Parcel Owners and in certain instances the Residential Committee, the Non-Residential Committee and the Special Benefited Area Committees are authorized to change the Rules in accordance with the following provisions, subject to the limitations set forth in Section 7.3.

(a) Declarant Authority. So long as Declarant has the authority to amend this Declaration of Community Covenants pursuant to Section 20.2(a), Declarant may unilaterally amend Exhibit “C” to reflect modifications, additions and deletions to the Rules.

(b) Board Authority. Subject to the notice requirements in Section 7.2(d), the requirements of Declarant’s approval set forth in Section 7.2(g) and Section 18.6, the Board’s duty to exercise judgment and reasonableness on behalf of the Owners Association and its Members, and, if applicable, the provisions of Section 7.2(d) with respect to Rules that apply to a particular membership class or subclass, the Board may adopt new Rules and modify or rescind existing Rules by a majority of the votes cast by the Directors at any Board meeting at which a quorum of Directors is present.

(c) Membership Authority. Subject to the notice requirements in Section 7.2(d), the requirements of Declarant’s approval set forth in Section 7.2(g) and Section 18.6, and if applicable, the provisions of Section 7.2(d) with respect to Rules that apply to a particular membership class or subclass, the Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association also may adopt new Rules and modify or rescind existing Rules at any meeting of the Owners Association duly called for such purpose, regardless of the manner in which the original Rule was adopted; provided, however, that the Restricted Residential Subclass of Members shall be excluded from any votes regarding Rules that pertain solely to the Standard Residential Area of Common Responsibility.

(d) Class and Special Benefited Area Rules. The Rules may include specific provisions that apply to particular membership classes or subclasses, or to particular Parcel Use Designations, or to particular Special Use Areas and Special Benefited Areas; provided that no such specific rule or provision shall conflict with this Declaration of Community Covenants, the Design Guidelines or any Rule of general applicability adopted with respect to the Community as a whole. Subject to the foregoing provisos, (i) the Residential Committee may adopt or modify reasonable and specific Rules that apply to the Residential Parcels, the Restricted Residential Parcels, the Residential Class of Members and each of its subclasses, the Universal Residential Area of Common Responsibility, the Standard Residential Area of Common Responsibility, and governance of the Residential Committee, and (ii) the Non-Residential Committee may adopt or modify reasonable and specific Rules that apply to the Non-Residential Parcels, the Non-Residential Class of Members and each of its subclasses, the Non-Residential Area of Common Responsibility, and governance of the Non-Residential Committee. Subject to the provisos contained in the first sentence of this Section, the Residential Committee and the Non-

Residential Committee together may adopt or modify reasonable and specific Rules that apply to the Mixed Use Parcels, and each Special Benefited Area Committee may adopt and modify reasonable and specific Rules that apply to its respective Special Benefited Area, the Special Use Areas, if any, assigned to its Special Benefited Area, the benefits provided to the Special Benefited Area, and governance of its own committee. All amendments to the Rules during the Declarant Control Period shall be subject to Declarant's approval as provided in Section 7.2(g) and Section 18.6, and any amendment to the Rules by the Declarant shall not require the prior approval of any of the Residential Committee, the Non-Residential Committee or any Special Benefited Area Committee.

(e) **Notice.** The Board shall send notice to all Parcel Owners concerning a proposed Rule change by the Board or Members at least five (5) business days prior to the meeting of the Board or the Parcel Owners at which such action is to be considered. The applicable committee shall send notice to all affected Parcel Owners concerning a proposed Rule change by such committee at least five (5) business days prior to the meeting of the committee which such action is to be considered. At any such meeting, Parcel Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(f) **Effective Date.** A Rules change adopted under this Section shall take effect no sooner than thirty (30) days after the date on which written notice of the Rules change is given to the affected Owners. New Rules or changes to existing Rules need not be recorded to be effective.

(g) **Declarant Approval.** As provided in Section 18.6, during the Declarant Control Period, any Rules change also shall require Declarant's approval prior to its becoming effective.

(h) **Administrative and Operating Policies.** The procedures set forth in this Section 7.2 for establishing or amending Rules do not apply to administrative and operating rules and policies that the Board (and in certain instances the Residential Committee, the Non-Residential Committee, or a Special Benefited Area Committee), with the approval of Declarant during the Declarant Control Period, may adopt relating to the Area of Common Responsibility, such as hours of operation of a recreational facility, specific speed limits on private roads, designation of specific parking areas and hours during which parking is permitted and prohibited, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such rules and policies may be published as part of the Rules set forth in Exhibit "C," as may be amended.

(i) **Conflicts.** No action taken under this Section 7.2 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration of Community Covenants other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration of Community Covenants (exclusive of the Rules), this Declaration of Community Covenants shall control. In the event of a conflict between a specific Rule adopted by the Residential Committee, the Non-Residential Committee or any Special Benefited Area Committee and any general Rule applicable to the Community in general, the general Rule shall control.

7.3. Protection of Parcel Owners and Others

Except as may be set forth in this Declaration of Community Covenants (either initially or by amendment) or in the initial Rules set forth in Exhibit “C,” all Rules shall comply with the following provisions:

(a) **Similar Treatment.** The Rules shall generally treat similarly situated Parcels and Sub-Units in similar fashion; however, the Rules may vary by Parcel Use Designation, membership class or subclass, or Special Use Areas or Special Benefited Areas, or by location, use, or other distinct characteristics of areas within Koa Ridge.

(b) **Activities Within Parcels.** No Rule shall unreasonably interfere with any permitted use of a Parcel or Sub-Unit, except that the Rules may prohibit or regulate activities which are inconsistent with the Master Plan or the Governing Documents, that create monetary costs for the Owners Association or other Owners, that create a danger to anyone’s health or safety, that create unsightly conditions visible from outside of a structure, or that are an unreasonable source of annoyance or nuisance. In addition, Section 7.1 prohibits or restricts certain uses within a Parcel.

(c) **Allocation of Burdens and Benefits.** No Rule shall unreasonably alter the allocation of financial burdens among similar Parcels or Sub-Units, or unreasonably modify rights to use the Area of Common Responsibility to the detriment of any Owner as compared to similar Owners. Nothing in this provision shall prevent the adoption of rules generally applicable to particular classes or subclasses of Members, Parcel Use Designations, Special Use Areas, or Special Benefited Areas as described in Section 7.2(d), or prevent the Owners Association or Declarant from denying use privileges to those who are delinquent in paying assessments, fines, or other charges, who abuse the Area of Common Responsibility or who otherwise violate the Governing Documents. This provision does not affect the right to levy assessments as provided in Chapter 12.

(d) **Leasing and Transfer of Parcels.** No Rule shall prohibit leasing, mortgaging, or transfer of any portion of a Parcel or require approval prior to leasing, mortgaging, or transferring a Parcel, subject to compliance with the terms and conditions of this Declaration of Community Covenants and other Governing Documents; provided that, except for hotels, motels timeshare units, vacation rentals and similar uses permitted in accordance with Section 7.1(d), the Owners Association or the Board may require a minimum lease term of not less than thirty (30) days.

(e) **Reasonable Rights to Develop.** No Rule may unreasonably interfere with the ability of Declarant, or any Declarant Affiliate or Project Developer to develop, market, and sell property described in the Master Plan.

(f) **Reserved Rights.** No Rule may unreasonably interfere with the exercise of any rights reserved to the Declarant, any Declarant Affiliate or their successors and assigns under this Declaration of Community Covenants.

7.4. Parcel Owners' Acknowledgment and Notice to Purchasers

By accepting ownership to a Parcel or Sub-Unit, each Owner acknowledges and agrees that the use, enjoyment, and marketability of its Parcel or Sub-Unit is limited and affected by the Rules, which may change from time to time, subject to the limitations and protections provided in this Declaration of Community Covenants. All purchasers of Parcels or Sub-Units are hereby notified that initial Rules have been adopted and that the Declarant, Board, Owners or various committees may from time to time amend the Rules or adopt additional rules and that such Rules and additional Rules as from time to time adopted and amended may not be set forth in a recorded document.

A copy of the current Rules and all administrative policies shall be made available from the Owners Association upon request. The Owners Association may charge a reasonable fee to cover its reproduction cost.

7.5. Construction Activities on Parcels

Development and construction of improvements throughout Koa Ridge will be on-going during the Development and Sale Period. It is understood that some level of interference (e.g., temporary road closures, detours, etc.) will occur, and that Declarant may impose additional regulations governing development and construction activities, including the screening of construction staging areas. As set forth in Section 13.5, Section 14.10, Chapter 18 and other provisions of this Declaration of Community Covenants each Owner and Occupant acknowledges and accepts the effects of all such development and construction activities, including noise, dust and annoyances associated with construction and development.

7.6. Wireless Communications

Wireless Internet or other communications network systems (“**WiFi System(s)**”) may be installed or otherwise used in a Parcel or Sub-Unit provided that precautions are taken to ensure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems operated by Declarant, Declarant’s Affiliates, Declarant’s successors or assigns or by the Owners Association or otherwise installed in or serving other Parcels or Sub-Units or portions of Koa Ridge. Declarant or the Owners Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including without limitation, requiring assurance from the installer of the system that proper precautions are being taken. Exterior WiFi Systems and WiFi Systems which are visible from outside any structure shall be subject to the Design Guidelines and provisions of Chapter 5 of this Declaration of Community Covenants.

Each Owner is responsible for ensuring that any WiFi System installed or otherwise used in its Parcel or Sub-Unit does not so interfere with, disturb, or intercept other signals, networks, or systems within Koa Ridge. Declarant or the Owners Association may require the termination and removal of any WiFi System found to cause such problems.

The Owners Association, Declarant, and their respective current and former partners, members, directors, officers, agents, employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation, use, or effectiveness of any

WiFi System in Koa Ridge, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems within any Parcel or Sub-Unit.

In addition, during the Development and Sale Period, no Owner may charge a fee, and no Parcel Owner shall permit any Sub-Unit Owner or other Occupant of the Parcel or any Sub-Unit to charge a fee, for wireless Internet service without Declarant's prior written consent. Thereafter, the Board's consent shall be required to offer or provide wireless Internet service for a fee.

7.7. Exempt Property

Declarant or the Board (with the approval of the Declarant during the Development and Sale Period) shall have the right, but not the obligation, from time to time to grant full or partial exemptions from this Chapter or from the Rules to Civic Parcels (including Public Utility Parcels) and Community Support Parcels.

Chapter 8

Compliance and Enforcement

8.1. Compliance and Responsibility of Owners

Parcel Owners and Sub-Unit Owners must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. Each Parcel Owner shall enforce the Governing Documents against the Sub-Unit Owners and Occupants of its Parcel, and each Parcel Owner shall be jointly and severally liable with its Sub-Unit Owners, and with the Occupants of its Parcel for any violation of the Governing Documents by such Persons, and for any damage to the Area of Common Responsibility that such Persons may cause. Each Sub-Unit Owner shall also enforce the Governing Documents against the Occupants of its Sub-Unit, and each Sub-Unit Owner shall be jointly and severally liable with its Parcel Owner and with the Occupants of its Sub-Unit for any violation of the Governing Documents by such Persons, and for any damage to the Area of Common Responsibility that such Persons may cause. Each Parcel Owner is subject to sanctions for any violation of the Governing Documents by its Sub-Unit Owners or by any Occupants of its Parcel, whether or not the Owners Association also pursues sanctions against the actual violator. Each Sub-Unit Owner is subject to sanctions for any violation of the Governing Documents by any Occupants of its Sub-Unit, whether or not the Owners Association also pursues sanctions against the actual violator.

8.2. Remedies for Non-Compliance

Subject to the provisions of Chapter 21, the Owners Association, Declarant, affected Parcel Owners and affected Sub-Unit Owners (acting through their respective Parcel Associations) shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violations of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Notice and Opportunity for a Hearing. After written notice to the violator and, if applicable, to (1) the violator's Parcel Owner, if the violator is not a Parcel Owner, and (2) the violator's Sub-Unit Owner through its Parcel Association, if the violator is not a Sub-Unit Owner, the Board may, after a hearing as described below, take any or all of the following actions:

(i) establish and impose a reasonable monetary fine against the violator, which fine shall constitute a lien upon the violator's Sub-Unit or Parcel; and if the violator is not the Owner of a Sub-Unit or Parcel, the Board may at its option also impose a reasonable monetary fine upon the violator's Sub-Unit Owner and/or Parcel Owner, each of which shall constitute a lien upon such Owner's Sub-Unit or Parcel; and if the violator is a Sub-Unit Owner, the Board may at its option also establish and impose a reasonable monetary fine upon the violator's Parcel Association, which fine shall constitute a lien upon the Parcel Association's interest in its Parcel; and with respect to any such fine, record a Notice of Lien against the applicable Parcel or Sub-Unit as provided in Section 12.7; provided, however, that the assessment of a fine against the violator or failure to assess a fine against the violator shall not absolve any Parcel Owner or Sub-Unit Owner from responsibility for

violations of the Governing Documents by its Occupants, or prevent the Board from also imposing sanctions against the violator's Sub-Unit Owner and/or Parcel Owner;

(ii) suspend services the Owners Association provides to a Parcel or a Sub-Unit or suspend an Owner's or Occupant's rights to use or use privileges in certain facilities of the Owners Association (except that no hearing is required if the Owner is more than ninety (90) days delinquent in paying any assessment or other charge owed to the Owners Association and except that no such suspension shall unreasonably interfere with any Owner's access to its Parcel or Sub-Unit or with any Owner's use of easements that provide water, electricity, gas or telecommunication or refuse collection services to its Parcel or Sub-Unit);

(iii) except as permitted without notice and hearing in Section 8.2(b) below, enter the property and exercise self-help or take action to abate any violation of the Governing Documents occurring on a Parcel or Sub-Unit (including removing personal property that violates the Governing Documents), and any such entry shall not be deemed a trespass;

(iv) require an Owner, at its own expense, to (A) remove any structure or other Improvement on such Owner's Parcel or Sub-Unit in violation of Chapter 5, the Koa Ridge Standard, or other requirements under the Governing Documents, and to restore the Parcel or Sub-Unit to its previous condition or to a condition which would be in compliance with the Governing Documents, or (B) perform such repairs, maintenance or other work on a Parcel or Sub-Unit as is required to bring the Parcel or Sub-Unit into compliance with the Koa Ridge Standard or other requirements under the Governing Documents;

(v) levy Specific Assessments to cover costs incurred by the Owners Association to bring a Parcel or Sub-Unit into compliance with the Governing Documents; and

(vi) record a notice of violation with respect to any Parcel or Sub-Unit on which or with respect to which a violation exists.

In addition to written notice, and except as otherwise provided, a violator shall be given the opportunity for a hearing in the manner provided in the By-Laws in connection with any of the above sanctions imposed upon it. A Sub-Unit Owner or Parcel Owner (including a Parcel Association) shall also be given the opportunity for a hearing in the manner provided in the By-Laws in connection with any of the above sanctions imposed against it in the event it is not the violator. Nothing in this Section 8.2(a) shall constitute a blanket lien prohibited by HRS, Section 514B-45.

(b) Other Sanctions. The Board may take any or all of the following actions to obtain compliance with the Governing Documents without notice or the opportunity for a hearing, and any entry upon the property of an Owner to take any of the following actions shall not be deemed a trespass:

(i) enter the property and exercise self-help or take action to abate a violation on those portions of a Parcel or Sub-Unit which are not a part of the Area of

Common Responsibility in any emergency situation or any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Area of Common Responsibility under any circumstances;

(iii) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to Section 8.2(a)(iv) above within ten (10) days after receipt of written notice to do so; and

(iv) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Sanctions Against Sub-Unit Owners, Parcel Owners and Other Parcel Occupants. The Owners Association, by and through the Board, may enforce any provision of the Governing Documents, including any Rule, against any violator, including any Occupant of a Parcel or Sub-Unit, as well as against such violator's Sub-Unit Owner and/or Parcel Owner. As such, any reference in Section 8.2(a) and Section 8.2(b) to sanctions, fines or liens against a violator shall also apply to sanctions, fines and liens against such violator's Sub-Unit Owner and Parcel Owner, jointly and severally.

In an appropriate situation, and to the extent not inconsistent with law or any fiduciary obligation of the Board, the Owners Association may assign or delegate all or any of its enforcement rights with respect to Sub-Unit Owners and other Occupants of a Parcel to the Parcel Association for the Parcel. If the Owners Association shall so assign or delegate all or any portion of such enforcement rights, the Parcel Association shall accept such assignment or delegation and shall thereafter be responsible for such enforcement.

(d) Declarant's Right to Impose Sanctions.

(i) In the event that the Owners Association fails or refuses to take action or impose sanctions against any Owner or Occupant after notice from Declarant of a violation of the Governing Documents, Declarant shall have the right, but shall not be obligated, to take action under Section 8.2(a) on behalf of the Owners Association (including the levy of monetary charges and liens) after notice and hearing in the same manner as the Owners Association under Section 8.2(a), and any entry upon the property of an Owner or the Owners Association in furtherance thereof shall not be deemed a trespass. In addition, Declarant may take action under Section 8.2(b) (including the exercise of self-help actions to abate, remove or cure a violation and/or bringing suit at law or in equity) in the same manner as the Owners Association under Section 8.2(b), and any entry upon the property of an Owner or the Owners Association in furtherance thereof shall not be deemed a trespass.

(ii) In the event that the Owners Association or any of its officers, Directors or representatives violates any Governing Document or fails to perform any obligation under the Governing Documents, Declarant shall have the right to file suit at law

or in equity to enforce the Governing Documents. In addition, in the event that the Owners Association fails to maintain the Area of Common Responsibility or any portion thereof in accordance with the Governing Documents or in the event that the Owners Association fails to perform any of its obligations with respect to the improvement, use or operation of all or any portion of the Area of Common Responsibility, the Declarant shall have the right, upon ten (10) days' prior notice to the president of the Owners Association, to enter upon the property and perform such work as necessary to satisfy the obligations of the Owners Association and to restore such property to such condition and operate such property in such manner so as to satisfy the obligations of the Owners Association under the Governing Documents. The Owners Association shall within ten (10) days after the Declarant's demand reimburse the Declarant for all costs and expenses incurred by the Declarant with respect to such work together with interest thereon at the rate of one percent (1%) per month. Any such action shall not be deemed a trespass upon the property of the Owners Association, Owner or Occupant.

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking or refraining from taking enforcement action. For example, the Board may determine that, in a particular case:

- (a) the Owners Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) a technical violation is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Owners Association's resources; or
- (d) that it is not in the Owners Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

However, any decision by the Board not to pursue an enforcement action in any particular case shall not impair or prevent the Declarant from exercising any of its rights under Section 8.2(d).

8.4. Failure or Decision Not to Enforce

A decision not to enforce a particular provision shall not prevent the Owners Association or Declarant from enforcing the same provision at a later time or prevent the enforcement of any other provision. A failure or a decision not to enforce any provision shall not constitute a waiver of any rights or remedies of the Owners Association or Declarant for any violation of the Governing Documents, nor shall any failure or decision not to enforce any provision in any instance constitute approval by the Owners Association or Declarant of any action by any Person in violation of the Governing Documents.

8.5. Attorney's Fees and Costs

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

8.6. Enforcement of Ordinances

The Owners Association, by contract or other agreement, may enforce applicable city ordinances. In addition, the City and County of Honolulu may enforce its ordinances within Koa Ridge.

PART THREE: ASSOCIATION AUTHORITY, FUNCTIONS, OPERATIONS AND RESPONSIBILITIES

Chapter 9 Management and Maintenance of Area of Common Responsibility

9.1. Acceptance and Control of Property

(a) **Transfers, Dedications, and Conveyances by Declarant.** Declarant, Declarant Affiliates, or their respective designees may transfer, dedicate, convey or grant to the Owners Association interests in real or personal property (i) within Koa Ridge, or (ii) that benefit all or portions of Koa Ridge, and the Owners Association shall accept such transfers, dedications, and conveyances. Such property may be improved, partially improved, or unimproved (i.e. without structures or landscaping, and in their natural state) and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property includes the property described in Section 9.2, and may include property dedicated to or intended to be dedicated to the City and County of Honolulu or other governmental entity or authority, notwithstanding any delays in formal dedication of such properties.

Upon Declarant's written request, the Owners Association shall for no payment, fee or other consideration, reconvey to Declarant or a Declarant Affiliate any real property originally conveyed to the Owners Association, free and clear of any additional encumbrances or liens, to the extent such real property was conveyed in error, or is needed to make minor adjustments in property lines or to accommodate changes in the development plan for Koa Ridge.

(b) **Management and Control.** The Owners Association is responsible for management, operation, and control of the Area of Common Responsibility. The Owners Association may enter into leases, licenses, or operating agreements with respect to portions of the Area of Common Responsibility, for payment or no payment, as the Board deems appropriate. The Owners Association may permit use of Area of Common Responsibility facilities by persons other than Parcel or Sub-Unit Owners and may charge use fees in such amount as the Board may establish for such use.

9.2. Identification and Designation of Area of Common Responsibility

The Area of Common Responsibility includes any Common Area and any other property or improvements from time to time designated as Area of Common Responsibility by Declarant or by a Supplement in accordance with this Declaration of Community Covenants, or transferred dedicated, conveyed or granted to the Owners Association by Declarant, any Declarant Affiliate or any of their designees for use and/or maintenance as part of the Area of Common Responsibility. In addition, the Owners Association may designate portions of Koa Ridge as Area of Common Responsibility as specifically or implicitly provided in this Declaration of Community Covenants.

Upon designation of any property or improvements as part of the Area of Common Responsibility by Declarant or by a Supplement in accordance with this Declaration of Community Covenants, and/or transfer, dedication, conveyance or grant of any property or

improvements by Declarant, any Declarant Affiliate or any of their designees to the Owners Association for use and/or maintenance as part of the Area of Common Responsibility, the Owners Association shall accept such property and/or improvements as a part of the Area of Common Responsibility. Such property and improvements may include, without limitation, the following:

(a) the Village Green as approximately shown on the Master Plan (the “**Village Green**”), subject to Declarant’s right to modify the configuration, size and boundaries of the Village Green as set forth in this Declaration of Community Covenants;

(b) private streets, alleys, streetscapes, sidewalks, bicycle paths, median strips, public gathering areas, entry features, pedestrian bridges, open space, parks, recreational facilities, community signs, landscaping, fences, walls, irrigation systems, and lighting, common utilities, common parking facilities, and other improved, partially improved, or unimproved property within or serving Koa Ridge regardless of whether such areas are located within a Parcel’s boundaries;

(c) such other portions of the Parcels, including portions of or areas within structures on Parcels which serve multiple Parcels or uses within or in the vicinity of Koa Ridge (e.g., utilities or utility areas; group mailboxes or mailbox kiosks, elevators and/or stairwells; parking facilities; administrative offices; etc.), as may be dictated and designated by Declarant in this Declaration of Community Covenants, a Supplement, or any other covenant or agreement for maintenance entered into by, or otherwise binding on, the Owners Association;

(d) landscaping, lighting, irrigation facilities, and other improvements within dedicated or undedicated public rights-of-way (and notwithstanding any delays in formal dedication of such properties) within or in the vicinity of Koa Ridge to the extent that responsible governmental authorities do not maintain such areas to the Koa Ridge Standard;

(e) roadways, sidewalks, median and planting strips, and public rights of way within or in the vicinity of Koa Ridge, whether or not dedicated to the City and County or other governmental entity or authority (and notwithstanding any delays in formal dedication of such properties), designated as Area of Common Responsibility as described in Section 6.2 and any improvements, fences, walls, and landscaping and irrigation systems thereon, and streetscapes, common sidewalks, and landscaping between predominant improvements on any Parcel and the street, designated as Area of Common Responsibility as described in Section 6.2;

(f) drainage facilities, detention basins, storm water controls, channels, gulches and swales, and drainage berms, and similar improvements or features within or in the vicinity of Koa Ridge, whether or not dedicated to the City and County or other governmental entity or authority (and notwithstanding any delays in formal dedication of such properties), and whether improved, partially improved or unimproved;

(g) water wells, treatment facilities, reservoirs and storage facilities, distribution and transmission lines and facilities providing potable or nonpotable water to the Community;

(h) easement areas within or in the vicinity of Koa Ridge, including areas in or around the Waiahole Ditch and drainage areas in or around the Community, and electrical and

telecommunication lines and transmission stations to the extent that responsible parties do not maintain the same to the Koa Ridge Standard;

(i) improved, partially improved, or unimproved setback areas, buffer zones, privacy berms and/or slope areas, trails and firebreaks, within or in the vicinity of Koa Ridge, and improved, partially improved, or unimproved setback areas and buffer zones within or around powerlines, power transformers and other utility facilities, as from time to time designated by the Declarant;

(j) Association Maintenance Walls designated as described in Section 3.4;

(k) any additional property as may be designated by Declarant, or designated in this Declaration of Community Covenants, a Supplement, or a covenant or agreement for maintenance entered into by, or otherwise binding on, the Owners Association; and

(l) any property and facilities that Declarant or a Declarant Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of Owners, the Owners Association and its Members. Declarant shall identify any such property and facilities by written notice to the Owners Association, and they shall remain part of the Area of Common Responsibility until Declarant revokes such privilege of use and enjoyment by written notice to the Owners Association.

Each portion of the Area of Common Responsibility shall be designated as falling within one of the following: (1) the Residential Area of Common Responsibility, intended to principally benefit and be the responsibility of the Residential Parcels, the Restricted Residential Parcels, the Residential Sub-Units, Residential Uses upon the Mixed Use Parcels, and Residential Class of Members; (2) the Non-Residential Area of Common Responsibility, intended to principally benefit and be the responsibility of the Non-Residential Parcels, the Non-Residential Sub-Units, Non-Residential Uses upon the Mixed Use Parcels, and Non-Residential Class of Members; (3) the General Area of Common Responsibility, intended to principally benefit and be the responsibility of all Parcels, all Sub-Units, all Parcel Owners, and all classes and subclasses of Members; or (4) a Special Use Area. Each portion of the Residential Area of Common Responsibility shall be further designated as falling within either (a) the Universal Residential Area of Common Responsibility, intended to principally benefit and be the responsibility of all Residential Parcels, all Restricted Residential Parcels, the Residential Sub-Units, Residential Uses upon the Mixed Use Parcels, Restricted Residential Projects and the Residential Class of Members, or (b) the Standard Residential Area of Common Responsibility, intended to principally benefit and be the responsibility of all Residential Parcels, the Restricted Residential Parcels, the Residential Sub-Units, Residential Uses upon the Mixed Use Parcels, and the Residential Class of Members, but excluding Restricted Residential Projects on Restricted Residential Parcels, and also excluding the Restricted Residential Subclass of Residential Members.

9.3. Designation and Modification of Special Use Areas

Declarant may designate, modify the boundaries of or eliminate Special Use Areas as provided in Section 3.1 and Section 18.4. In addition, the Board may designate any portion of the Area of Common Responsibility as a Special Use Area, modify the boundaries of any Special Use Area, or eliminate any Special Use Area upon approval of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association, including Parcel Owners and/or Sub-Unit Owners (acting through their respective Parcel Associations) of at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes allocated to the Parcels and Sub-Units of the Special Benefited Area to which such Special Use Area is or is proposed to be assigned. During the Development and Sale Period or if Declarant or any Declarant Affiliate owns any Parcel or Sub-Unit within the Special Benefited Area to which such Special Use Area is or is proposed to be assigned, any such action by the Board shall also require Declarant's written consent.

9.4. Maintenance of Area of Common Responsibility

The Owners Association shall maintain and operate the Area of Common Responsibility in accordance with the Master Plan, the Governing Documents, the Koa Ridge Standard, and all applicable legal and regulatory requirements.

Without limiting the generality of the foregoing, and to the extent not assumed by Owners, the Owners Association shall, upon the Declarant's request, assume all of Declarant's maintenance responsibilities to the City and County of Honolulu or its governmental or quasi-governmental subdivisions, any state and federal entities or agencies, and similar entities of any kind with respect to the Area of Common Responsibility, and shall indemnify and hold Declarant harmless with respect to such assumed responsibilities. As and to the extent requested by the Declarant, the Owners Association shall also maintain such portions of the Area of Common Responsibility as may be dedicated or intended to be dedicated to governmental authority or agencies, in condition sufficient to be dedicated to and accepted by such governmental authorities or agencies. In addition, the Owners Association shall comply with governmental or quasi-governmental permits, approvals, or regulations concerning the Community.

The Owners Association may also maintain property it does not own within or in the vicinity of Koa Ridge, including, without limitation, portions of Parcels, open space or parks or park-like areas within or benefiting the Community, slope areas, drainage facilities, channels and swales, easement areas, or public rights-of-way and other property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Koa Ridge Standard or for the benefit of the Community, or if such maintenance is otherwise assumed by Declarant or the Owners Association pursuant to agreements with or approvals by the City and County of Honolulu or other governmental authorities or pursuant to agreements with Persons holding interests in land adjoining or in the vicinity of Koa Ridge.

The Owners Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it assumes or is obligated to assume maintenance responsibility and the damage or injury is caused by its negligence in performing its maintenance responsibilities.

9.5. Operation of Area of Common Responsibility

The Area of Common Responsibility shall generally be managed and controlled by the Board. In its discretion, the Board may: (a) with Declarant's approval during the Declarant Control Period, determine whether all or portions of the Area of Common Responsibility shall be open to the public, or all or some of Owners or Occupants of the Koa Ridge Community, and establish hours of operation for all or portions of the Area of Common Responsibility; (b) temporarily close portions of the Area of Common Responsibility to accommodate street fairs, festivals, or other events within or serving Koa Ridge (subject to such notice or approvals that the City and County of Honolulu may require, and with respect to the Village Green subject to the approval of Declarant during the Declarant Control Period and thereafter the approval of Board); (c) permit the operation of food and beverage carts and kiosks and other convenience carts and kiosks ancillary to the use of the Area of Common Responsibility (such carts and kiosks being referred to as "**Common Area Kiosks**") as described below; (d) establish and implement a standard of maintenance and improvement of the Area of Common Responsibility consistent with the Koa Ridge Standard and the Governing Documents; (e) establish the General Common Expense Budget as described in Section 12.2(a), which shall include maintenance and, as determined by the Board, capital improvements and improvement reserves for the General Area of Common Responsibility; (f) with Declarant's approval during the Declarant Control Period, adopt and enforce reasonable rules and regulations concerning the use and operation of the Area of Common Responsibility, including for the use and operation of the General Area of Common Responsibility; and (g) with Declarant's approval during the Declarant Control Period, temporarily close or interrupt operation of the Area of Common Responsibility as it may determine appropriate to perform maintenance or repairs.

However, the Board's management and control of the Area of Common Responsibility shall be subject to the following:

(a) The Residential Committee: (i) may, with Declarant's approval during the Declarant Control Period, establish and implement a standard of maintenance and improvement for the Universal Residential Area of Common Responsibility and the Standard Residential Area of Common Responsibility consistent with the Koa Ridge Standard and the Governing Documents; (ii) shall establish an annual maintenance and capital improvement budgets for the Universal Residential Area of Common Responsibility and Standard Residential Area of Common Responsibility (respectively, the "**Universal Residential Common Expense Budget**" and the "**Standard Residential Common Expense Budget**") and determine the level of improvement reserves for the Universal Residential Area of Common Responsibility and Standard Residential Area of Common Responsibility; (iii) may, with Declarant's approval during the Declarant Control Period, establish hours of operation for all or portions of the Universal Residential Area of Common Responsibility and Standard Residential Area of Common Responsibility; and (iv) may, with Declarant's approval during the Declarant Control Period, adopt and enforce reasonable rules and regulations concerning the use and operation of the Universal Residential Area of Common Responsibility and Standard Residential Area of Common Responsibility;

(b) The Non-Residential Committee: (i) may, with Declarant's approval during the Declarant Control Period, establish and implement a standard of maintenance and improvement

for the Non-Residential Area of Common Responsibility consistent with the Koa Ridge Standard and the Governing Documents; (ii) shall establish an annual maintenance and capital improvement budget for the Non-Residential Area of Common Responsibility (the “**Non-Residential Common Expense Budget**”) and determine the level of improvement reserves for the Non-Residential Area of Common Responsibility; (iii) may, with Declarant’s approval during the Declarant Control Period, establish hours of operation for all or portions of the Non-Residential Area of Common Responsibility; and (iv) may, with Declarant’s approval during the Declarant Control Period, adopt and enforce reasonable rules and regulations concerning the use and operation of the Non-Residential Area of Common Responsibility; and

(c) Each Special Benefited Area Committee: (i) may, with Declarant’s approval during the Declarant Control Period, establish and implement a standard of maintenance and improvement for the Special Use Areas, if any, assigned to it consistent with the Koa Ridge Standard and the Governing Documents; (ii) shall establish an annual maintenance and capital improvement budget for the Special Use Areas, if any, assigned to it, and for the benefits provided to the members of its Special Benefited Area (a “**Special Benefited Area Expense Budget**”) and determine the level of improvement reserves for its Special Use Areas; (iii) may, with Declarant’s approval during the Declarant Control Period, establish hours of operation for its Special Use Areas, if any, and any benefits provided to the members of its Special Benefited Area; and (iv) may, with Declarant’s approval during the Declarant Control Period, adopt and enforce reasonable rules and regulations concerning the use and operation of its Special Use Areas, if any, and the benefits provide to the members of its Special Benefited Area.

(d) During the Declarant Control Period, the location, use and operation of any Village Green Kiosk or other Common Area Kiosk shall require Declarant’s prior written approval, which may be given, withheld, or made subject to such conditions as Declarant in its discretion determines are appropriate. The operation of the Village Green Kiosks or other Common Area Kiosks will not change the status of the Village Green or any other portion of the Area of Common Responsibility, and although the Village Green Kiosks and other Common Area Kiosks and their operation and use will be subject to the terms of this Declaration of Community Covenants and other Governing Documents, the owners and operators of the Village Green Kiosks and other Common Area Kiosks will not be Members of the Owners Association, will not be subject to Base Assessments, and will not be entitled to any votes. The Declarant during the Declarant Control Period, and thereafter the Board, shall have the right from time to time to establish limits, standards, and criteria for the development, use and operation of Village Green Kiosks and other Common Area Kiosks, including limits, standards, and criteria pertaining to the size, design, number, hours and terms of operation, of or pertaining to the Village Green Kiosks and other Common Area Kiosks.

(e) During the Declarant Control Period, the Declarant may also, without the consent or approval of the Board or any other Person, permit the operation of Village Green Kiosks and other Common Area Kiosks, determine the location of any Village Green Kiosks and other Common Area Kiosks and/or impose conditions on the use and operation of Village Green Kiosks and other Common Area Kiosks.

(f) During the Declarant Control Period, the Declarant may, without the consent or approval of the Board or any other Person, temporarily close all or portions of the Village Green

and other portions of the Area of Common Responsibility to accommodate street fairs, festivals, community activities, or other events for the general benefit of the Koa Ridge Community.

9.6. Restoring Damaged Improvements within the Area of Common Responsibility

In the event of damage to or destruction of any portion of the Area of Common Responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Owners Association shall commence repairs or reconstruction of damaged Area of Common Responsibility improvements in a timely manner and shall endeavor to complete such work as soon as practical after such damage occurs (subject to reasonable delays caused by events outside of the Owners Association's control), unless:

- (a) this Declaration of Community Covenants is terminated pursuant to Section 20.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) within one hundred and eighty (180) days after the loss, a decision not to repair or reconstruct is approved by: (i) with respect to a Residential Area of Common Responsibility, consent of the Residential Committee and a vote of Parcel Owners entitled to cast at least a majority of the total Residential Votes; provided, however, that the Restricted Residential Subclass of Members shall be excluded from any votes pertaining solely to the Standard Residential Area of Common Responsibility; (ii) with respect to a Non-Residential Area of Common Responsibility, consent of the Non-Residential Committee and a vote of Parcel Owners entitled to cast at least a majority of the total Non-Residential Votes; (iii) with respect to a General Area of Common Responsibility, consent of the Board and a vote of Parcel Owners entitled to cast at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes; or (iv) with respect to a Special Use Area, consent of the Special Benefited Area Committee to which such Special Use Area is assigned and a vote of Owners (including Sub-Unit Owners acting through their respective Parcel Associations) entitled to cast at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes attributed to Parcels and Sub-Units of the Special Benefited Area to which the Special Use Area is assigned. If either the insurance proceeds or estimates of the loss, or both, are not available to the Owners Association within such 180-day period, then the period shall be extended until such funds or information are available.

In addition to the above vote requirements, during the Development and Sale Period, Declarant's consent is required for any decision not to repair or reconstruct Area of Common Responsibility or Special Use Area improvements.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and

thereafter shall be maintained by the Owners Association in a neat and attractive condition consistent with Koa Ridge Standard.

Insurance proceeds attributable to any General Area of Common Responsibility that are not used for rebuilding, restoration or repair shall be used as the Board determines, including among other options as a reserve against future General Common Expenses or as a distribution among the Members in proportion to their relative liability for General Common Expenses. Insurance proceeds attributable to any Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility that are not used for rebuilding, restoration or repair shall be used as the Residential Committee determines, including among other options as a reserve against future Universal Residential Common Expenses or Standard Residential Common Expenses, respectively, or as a distribution among the Parcel Owners in proportion to their relative liability for Universal Residential Common Expenses or Standard Residential Common Expenses, as applicable. Insurance proceeds attributable to any Non-Residential Area of Common Responsibility that are not used for rebuilding, restoration or repair shall be used as the Non-Residential Committee determines, including among other options as a reserve against future Non-Residential Common Expenses or as a distribution among the Parcel Owners in proportion to their relative liability for Non-Residential Common Expenses. Insurance proceeds attributable to any Special Use Area that are not used for rebuilding, restoration or repair shall be used as determined by the Special Benefited Area Committee to which such Special Use Area is assigned, including among other options as a reserve against future Special Benefited Area Expenses or as a distribution among the Owners of Parcels and Sub-Units of the Special Benefited Area to which such Special Use Area is assigned, in proportion to their relative liability for Special Benefited Area Expenses. If insurance proceeds are insufficient to cover the costs of repair or reconstruction of improvements within the Area of Common Responsibility, the Owners Association may levy Special Assessments in accordance with the provisions of Section 12.3, to cover the shortfall against those Owners responsible for cost of maintaining such improvements.

Notwithstanding the above, the provisions of the Hawaii Condominium Property Act, HRS 514B, with respect to repair and reconstruction of property shall also apply to those portions of the Area of Common Responsibility located within a Parcel governed by a condominium association.

9.7. The Village Green

The Village Green is intended to provide the Community with a multi-purpose venue as contemplated by the Master Plan and the Zoning Ordinance, and without limiting anything contained in this Declaration of Community Covenants, the Owners Association agrees to accept the Village Green as part of the Area of Common Responsibility. If and when it becomes part of the Common Area, the Village Green shall be part of the General Area of Common Responsibility.

The Owners Association, its officers and Directors, and each Owner hereby acknowledges and agrees that the Village Green shall be used as a multi-purpose, open-air venue generally open to the public as contemplated by the Master Plan and in satisfaction of and in compliance with the terms and conditions of the Zoning Ordinance, and agrees to cooperate with

the Declarant in complying with and satisfying the requirements of the Zoning Ordinance for the Village Green. Without limitation, the Owners Association shall enforce and will cooperate with the Declarant to enforce all provisions of this Declaration of Community Covenants, the Governing Documents and the Zoning Ordinance as respects the Village Green.

Declarant makes no representations and gives no guarantee whether or when the Village Green will be made part of the Common Area, and Declarant shall in its discretion control the use, development and maintenance of the Village Green until it becomes part of the Common Area. Before the Village Green becomes part of the Common Area, and also during the Development and Sale Period, Declarant shall also have the right to modify the configuration, size and boundaries of the Village Green as set forth in Section 3.1 and Section 18.4 of this Declaration of Community Covenants.

If and after the Village Green becomes part of the Common Area, the Board, with the Declarant's approval during the Declarant Control Period, shall manage and control the Village Green, and any improvements or modifications to the Village Green, with due consideration of the benefit of the Koa Ridge Community as a whole consistent and in compliance with the Koa Ridge Standard and in accordance with the provisions of this Declaration of Community Covenants, the Governing Documents, the Master Plan, the Zoning Ordinance and the State Land Use Conditions. In its management, control and use of the Village Green the Board shall in all respects comply with the terms and conditions, and shall satisfy all requirements of the Master Plan, the Governing Documents, the Zoning Ordinance and the State Land Use Conditions as respects the Village Green.

If and after the Village Green becomes part of the Common Area, the Board may, with the approval of Declarant during the Declarant Control Period: (a) permit street fairs, festivals, community activities, or other private or public events within the Village Green and temporarily close or restrict use of the Village Green to accommodate such functions; (b) permit the operation of Common Area Kiosks within the Village Green ancillary to the use of the Village Green as part of the General Area of Common Responsibility (such Common Area Kiosks being referred to as "**Village Green Kiosks**") as described in Section 9.5(d); (c) establish and implement a standard of maintenance and improvement for the Village Green consistent with the Koa Ridge Standard and the Governing Documents; (d) adopt and enforce rules and regulations concerning the use and operation of the Village Green, including noise and lighting restrictions and hours of operation; and (e) permit the temporary closure or interruption of operation of the Village Green as needed to perform maintenance or repairs.

During the Declarant Control Period and also prior to making the Village Green part of the Common Area, the Declarant may, without the consent or approval of the Board or any other Person: (a) permit the operation of Village Green Kiosks, determine the location of any Village Green Kiosks and/or impose conditions on the use and operation of Village Green Kiosks, and (b) temporarily close all or portions of the Village Green to accommodate street fairs, festivals, community activities, or other events for the general benefit of the Koa Ridge Community.

9.8. Use of Area of Common Responsibility and Special Use Areas by other Members and Residents

(a) Use of Residential Area of Common Responsibility by Others. The Owners Association shall, as directed by Declarant during the Declarant Control Period, and thereafter may at the discretion of the Board, make all or portions of the Residential Area of Common Responsibility available to residents and Occupants of Non-Residential Parcels, Non-Residential Sub-Units, and non-residential Occupants of Mixed Use Parcels for a reasonable use fee comparable to the use fees and Base Assessments for Residential Common Expenses payable by the Owners of Residential Parcels and Sub-Units within Residential Parcels. The Owners Association shall also, as directed by Declarant during the Declarant Control Period, and thereafter may also at the discretion of the Board, make all or portions of the Standard Residential Area of Common Responsibility available to residents and Occupants of Restricted Residential Projects on Restricted Residential Parcels for a reasonable use fee comparable to the use fees and Base Assessments for Standard Residential Common Expenses payable by the Owners of Residential Parcels and Sub-Units within Residential Parcels. For example, all or portions of any recreational facilities within the Standard Residential Area of Common Responsibility may be made available to the residents of Restricted Residential Projects on Restricted Residential Parcels, residents of Medically Assisted Living Facilities and Non-Medical Living Facilities upon Non-Residential Parcels, and/or to employees of commercial tenants upon a Commercial Parcel, each for a use fee comparable to the use fees and Base Assessments paid by the Owners responsible for assessments for Standard Residential Common Expenses, as applicable.

(b) Use of Non-Residential Area of Common Responsibility by Others. The Owners Association shall, as directed by Declarant during the Declarant Control Period, and thereafter may at the discretion of the Board, make all or portions of the Non-Residential Area of Common Responsibility available to residents and Occupants of Residential Parcels, Restricted Residential Parcels, Mixed Use Parcels or Residential Sub-Units for a reasonable use fee comparable to the use fees and Base Assessments for Non-Residential Common Expenses payable by the Owners of Non-Residential Parcels and Non-Residential Sub-Units. For example, all or portions of the Non-Residential Area of Common Responsibility (including any recreational facilities within the Non-Residential Area of Common Responsibility) may be made available to the residents of Residential Parcels, Residential Sub-Units, Mixed Use Parcels or Restricted Residential Parcels for a use fee comparable to the use fees and Base Assessments paid by the Owners of Non-Residential Parcels and Non-Residential Sub-Units, as applicable.

(c) Use of Special Use Areas by Others. The Owners Association shall, as directed by Declarant during the Declarant Control Period, make all or a portion of a Special Use Area available to residents and occupants of the Community for a reasonable use fee, which fee shall be used to offset the Special Benefited Area Expenses attributable to such Special Use Area. Upon approval of a majority of the Residential Votes and a majority of the Non-Residential Votes allocated to Owners (including Sub-Unit Owners acting through their respective Parcel Associations) of the Parcels and Sub-Units to which a Special Use Area is assigned, the Owners Association may also permit Occupants of other Parcels or Sub-Units to use all or a portion of such Special Use Area upon payment of reasonable user fees, which fees shall be used to offset the Special Benefited Area Expenses attributable to such Special Use Area.

9.9. Relationships with Other Properties

The Owners Association may enter into contractual arrangements or may be bound by a recorded covenant to provide for sharing of costs between Koa Ridge and the owner(s) of adjacent or nearby properties for the: (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services. During the Declarant Control Period, the Owners Association shall enter into such agreements or covenants upon Declarant's request.

Chapter 10

Association Services, Functions and Operations

10.1. Provision of Services

The Owners Association may from time to time arrange for or provide services to Owners and their Parcels and/or Sub-Units, directly or through “arms-length” contracts with Declarant or other third parties, and may from time to time employ personnel to provide, administer or oversee such services. The Owners Association may enter into bulk service agreements by which a particular service is provided to all or some Parcels, Sub-Units or Members, or it may offer various services at the option of particular Parcels and/or Sub-Units or Members.

By way of example and not limitation, services offered by the Owners Association might include waste management, trash collection or recycling services, security and safety services, transportation services and programs (such as bus pass programs and subsidies, shuttle services, and ridesharing programs), Telecommunications Systems and other communication and technology services, parking services and facilities, utilities, fire protection, concierge services, landscape or building maintenance, pest control or other similar services.

Services may be provided to the Community as a whole, to Owners of Parcels improved with a completed and occupied structure (“**Improved Parcels**”), to one or more classes or subclasses of Members, to one or more Special Benefited Areas, or to particular Sub-Units and/or Parcels. Services may be provided as a Universal Residential Common Expense, a Standard Residential Common Expense, a Non-Residential Common Expense, a General Common Expense or a Special Benefited Area Expense, or as an expense attributable to particular Parcels and/or Sub-Units, for each of which the Owners Association may levy assessments pursuant to the applicable Section of Chapter 12; provided, unimproved Parcels need not be assessed for services available only to Improved Parcels (e.g., cable television). The Owners Association may charge a separate use fee, in such amount as the Board may determine appropriate in its discretion, for any services offered at the option of an Owner, which fee shall be assessed against the benefited Parcel or Sub-Unit as a Specific Assessment pursuant to Chapter 12.

The Owners Association may provide services to persons or property outside the Community, and if the Owners Association provides services to Persons or property outside the Community, the Owners Association shall assess a portion of such costs or charge a use fee to such Persons outside the Community as are benefited by or have rights to such services.

In accordance with the provisions of Chapter 7, the Owners Association may from time to time adopt, amend and enforce Rules that govern the operation, use and availability of services and facilities offered by the Owners Association.

Any Owners Association contract for services may require individual Owners or Occupants to execute separate agreements directly with the Persons providing the services. Such contracts and agreements shall be of reasonably limited duration and may contain terms and conditions that, if violated by the Owner or the Occupants of a Parcel or Sub-Unit, may result in

termination of services provided to such Parcel or Sub-Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Parcel as a Common Expense, Special Benefited Area Expense or Specific Assessment pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Owners Association to provide such services.

Each Owner for itself and its Occupants acknowledges and agrees that the provision of any service by the Owners Association does not obligate the Owners Association or Declarant to continue to provide such service for any length of time, or guarantee that the terms and conditions on which such service is offered will remain the same over any particular period of time.

As set forth in Section 14.2, each Owner and Occupant further acknowledges and agrees that any safety or security service or any other service offered by the Owners Association does not guarantee the safety or security of Koa Ridge, the personal safety of any Person, or the safety or security of any such Owner or Occupant's personal property, and that it is responsible for its own personal safety and security of its respective property within Koa Ridge.

10.2. Provision of Services to Special Benefited Areas

(a) Special Benefited Areas Designated by Declarant. The Owners Association shall provide services to any Special Benefited Area designated by Declarant pursuant to Section 3.3 or Section 18.4 as required by the terms of any Supplement applicable to the Special Benefited Area.

(b) Special Benefited Areas Designated by Board. In addition to Special Benefited Areas which Declarant may designate pursuant to Section 3.3 or Section 18.4, any group of Parcel Owners and/or Sub-Unit Owners may petition the Board to designate their Parcels or Sub-Units (or a combination of Parcels and Sub-Units) as a Special Benefited Area for the purpose of receiving from the Owners Association: (i) special benefits or services which are not provided to all Parcels and Sub-Units; or (ii) a higher level of service than the Owners Association otherwise provides. Any such petition shall be signed by Owners representing a majority of the votes allocated to the Parcels and Sub-Units within the proposed Special Benefited Area based upon the assignment of Equivalent Units and by Declarant during the Development and Sale Period or if Declarant or a Declarant Affiliate owns any Parcel or Sub-Unit within the proposed Special Benefited Area.

Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided, and if the Board deems appropriate it shall submit a proposal to the Parcel Owners and Sub-Unit Owners (through their respective Parcel Associations) in the proposed Special Benefited Area stating such terms and the initial fees for providing the requested service, which may include a reasonable administration charge. If (i) Parcel Owners and Sub-Unit Owners (acting through their respective Parcel Associations)

representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes allocated to the Parcels and Sub-Units within the proposed Special Benefited Area, and (ii) Declarant during the Development and Sale Period or if Declarant or a Declarant Affiliate owns any Parcel or Sub-Unit within the proposed Special Benefited Area, approve the proposal in writing, the Board shall designate the Parcels and Sub-Units as a Special Benefited Area and include the fees for such service as a line item in the Special Benefited Area budget pursuant to Section 12.2(c).

Upon petition by any group of Owners representing a majority of the votes in the affected Special Benefited Area, and Declarant during the Development and Sale Period or if Declarant or a Declarant Affiliate owns any Parcel or Sub-Unit within the affected Special Benefited Area, the Board shall consider and may by Board Resolution amend the boundaries of any Special Benefited Area (including to add Parcels and/or Sub-Units to or remove Parcels and/or Sub-Units from a Special Benefited Area) or eliminate any Special Benefited Area, in each case with the written approval of (i) Declarant during the Development and Sale Period or if Declarant or any Declarant Affiliate owns any Parcel or Sub-Unit within the affected Special Benefited Area, and (ii) at least a majority of the Residential Votes and at least of a majority of the Non-Residential Votes of the Owners (including Sub-Unit Owners acting through their respective Parcel Associations) within the affected Special Benefited Area, and in each case in the same manner and following the same procedures and requirements as is prescribed above for the designation of Special Benefited Areas.

(c) Special Benefited Area Voting - Sub-Units. If a proposed Special Benefited Area includes Sub-Units, or if any other action described in Section 10.2(b) is proposed for a Special Benefited Area that includes Sub-Units, the Owners of the Sub-Units (and not their respective Parcel Associations), shall sign the petition requesting designation or other action by the Board. However, the votes of such Sub-Unit Owners with respect to such action or designation shall be cast as a block, through their respective Parcel Associations.

10.3. Community Technology

The Owners Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Owners Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an “online” newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and business operators to interact and participate in Association-sponsored activities. Such technology services may be provided for the benefit of the Community as a whole, for the benefit of Improved Parcels only, for the benefit of one or more classes or subclasses of Members, for the benefit of one or more Special Benefited Areas or to Owners and Occupants of particular Parcels and/or Sub-Units. The cost of such services shall be allocated and assessed against the Owners as a whole or the benefited Owners, Parcels and Sub-Units and other Persons in the manner described in Section 10.1.

To the extent Hawaii law permits, and unless otherwise specifically prohibited in the Governing Documents, the Owners Association may send notices by electronic means, hold

Board or Owners Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Chapter 11

Association Insurance

11.1. Required Coverages

The Owners Association shall obtain and maintain in effect the following insurance coverage, if reasonably available as determined in the Board's discretion, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Property insurance providing such coverage, insuring against such risks of physical loss on a replacement cost basis, and upon such terms and conditions, as the Board determines reasonable and appropriate for all insurable improvements on:

- (i) the Common Area;
- (ii) other portions of the Area of Common Responsibility, to the extent that the Owners Association has responsibility for repair or replacement in the event of a casualty;
- (iii) any Parcel within a Special Benefited Area or Special Use Area, to the extent mandated by a Supplement; and
- (iv) such other property to the extent deemed appropriate by the Board.

Provided such coverage is reasonably available and economically feasible, the Owners Association property insurance shall not generally exclude coverage for loss or damage arising out of an act of terrorism. To the extent reasonably available, the limits of Owners Association property insurance policies shall be sufficient to cover the replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance insuring the Owners Association and its Members for damage or injury caused by the negligence of the Owners Association or any of its Members, employees, agents, or contractors while acting on its behalf, providing coverage against such risks, at such limits (but in any event not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate), and upon such terms and conditions with respect to bodily injury, personal injury, and property damage, as a reasonably prudent person would obtain;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage providing coverage against such risks, at such limits, and upon such terms and conditions, as the Board shall determine; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than \$1,000,000 per occurrence.

In the exercise of its business judgment, the Board may also procure insurance, of a character normally carried with respect to associations of comparable character and function in the State of Hawaii, against such additional risks as the Board may deem advisable. The Board shall annually review the sufficiency of its insurance program, including, from time to time as determined by the Declarant during the Declarant Control Period and thereafter as determined by the Board, with review by qualified insurance consultants familiar with insurable replacement costs in the City and County of Honolulu.

11.2. Deductibles

The Owners Association's policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a General Common Expense, Universal Residential Common Expense, Standard Residential Common Expense, Non-Residential Common Expense or a Special Benefited Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Parcel Owners or Sub-Unit Owners, or their Occupants, then the Board may assess the full amount of such deductible against such Parcel Owner(s) and their Parcel(s), or such Sub-Unit Owner(s) and their Sub-Unit(s), as a Specific Assessment.

11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Owners Association and to each Parcel Owner that requests such certificate of insurance.

To the extent available at reasonable cost and terms, all Owners Association insurance shall:

(a) be written with a company authorized to do business in Hawaii which holds an A.M. Best's rating of A-VII or better, if reasonably available, or, if not, the most nearly equivalent;

(b) be written in the name of the Owners Association as trustee for the benefited parties. All policies shall be for the benefit of the Owners Association and its Members, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners or Occupants individually;

(d) contain a waiver of subrogation against the Declarant, the Owners, and the Parcel Associations;

(e) contain an inflation guard endorsement; and

(f) include an agreed amount endorsement, if the policy contains a co-insurance clause.

11.4. Association Insurance Premiums

Premiums for all Owners Association insurance shall be a General Common Expense, except that (a) premiums for property insurance covering only improvements within the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility shall be a Universal Residential Common Expense or Standard Residential Common Expense, respectively, (b) premiums for property insurance covering only improvements within the Non-Residential Area of Common Responsibility shall be a Non-Residential Common Expense, (c) premiums for property insurance covering only improvements within a particular Special Use Area shall be a Special Benefited Area Expense, and (d) premiums for property insurance benefitting a particular Parcel may be levied against that Parcel as a Specific Assessment unless, in any such case, the Board reasonably determines that other treatment of the premiums is more appropriate.

Chapter 12 Association Finances and Assessments

12.1. Association Expenses

(a) **Common Expenses.** Expenses that the Owners Association incurs, or expects to incur, in connection with the ownership (including property taxes), maintenance, operation, improvement and insurance of the Area of Common Responsibility, in fulfillment of the Owners Association's responsibilities or obligations under the Governing Documents or in connection with actions taken by the Owners Association pursuant to or as authorized by the Governing Documents, and otherwise for the benefit of Koa Ridge, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board (with respect to the General Area of Common Responsibility), Residential Committee (with respect to the Residential Area of Common Responsibility), or Non-Residential Committee (with respect to the Non-Residential Area of Common Responsibility) determines are appropriate.

Common Expenses that pertain solely to the Residential Parcels, Restricted Residential Parcels, Residential Sub-Units, Residential Uses on the Mixed Use Parcels, or the Residential Area of Common Responsibility are referred to as "**Residential Common Expenses**", Common Expenses that pertain solely to the Non-Residential Parcels, Non-Residential Sub-Units, Non-Residential Uses on the Mixed Use Parcels, or the Non-Residential Area of Common Responsibility are referred to as "**Non-Residential Common Expenses**", and all other Common Expenses are referred to as "**General Common Expenses**".

Residential Common Expenses that pertain to the Standard Residential Area of Common Responsibility or to the Residential Parcels, Residential Sub-Units, or Residential Uses on the Mixed Use Parcels or Restricted Residential Parcels, but which do not pertain to Restricted Residential Uses upon Restricted Residential Parcels or the Restricted Residential Subclass of Members are referred to as "**Standard Residential Common Expenses**", and all other Residential Common Expenses are referred to as "**Universal Residential Common Expenses**".

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless Declarant and Parcel Owners representing a majority of the total Residential Votes and a majority of the total Non-Residential Votes in the Owners Association approve such expenditure.

The characterization of a particular expense as a "Common Expense" shall not preclude the Owners Association from seeking reimbursement for, or a contribution toward, such expenses from Persons who may benefit from the expenses incurred or share such expenses pursuant to this Declaration of Community Covenants, any Supplement, or any other recorded covenant or agreement, or from Persons whose actions resulted in the Common Expense.

(b) **Special Benefited Area Expenses.** All expenses that the Owners Association incurs or expects to incur in connection with providing benefits and services to a Special Benefited Area, including expenses relating to ownership (including property taxes), maintenance, operation, improvement, and insurance of the Special Use Areas, if any, within or

serving or under control or responsibility of the Special Benefited Area are considered “**Special Benefited Area Expenses**.” Special Benefited Area Expenses include such operating reserves and reserves for repair and replacement of capital items maintained for the benefit of the Special Benefited Area as the applicable Special Benefited Area Committee with respect to the Special Use Area determines are appropriate. Special Benefited Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate. Special Benefited Area Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless Declarant and Parcel Owners representing a majority of the total Residential Votes and a majority of the total Non-Residential Votes in the applicable Special Benefited Area approve such expenditure.

12.2. Budgeting for and Allocating Association Expenses

(a) **Preparation of Budget.** The Board shall use reasonable and diligent efforts each year to prepare a budget of the estimated General Common Expenses for the coming fiscal year (the “**General Common Expense Budget**”) no later than sixty (60) days prior to the beginning of such coming fiscal year. In addition, the Residential Committee shall use reasonable and diligent efforts each year to prepare the Universal Residential Common Expense Budget and Standard Residential Common Expense Budget for the coming fiscal year, the Non-Residential Committee shall use reasonable and diligent efforts each year to prepare the Non-Residential Common Expense Budget for the coming fiscal year, and each Special Benefited Area Committee shall use reasonable and diligent efforts each year to prepare a Special Benefited Area Expense Budget for its Special Benefited Area reflecting the estimated Special Benefited Area Expenses that the Special Benefited Area Committee expects to incur for the benefit of its Special Benefited Area in the coming fiscal year, each no later than sixty (60) days prior to such coming fiscal year. The General Common Expense Budget, the Universal Residential Common Expense Budget, the Standard Residential Common Expense Budget, the Non-Residential Common Expense Budget and all Special Benefited Area Expense Budgets together shall comprise, and are collectively referred to herein as the “**Common Expense Budget**”.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Special Benefited Area Expense of the Special Benefited Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board and/or applicable committee shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. So long as the Board or applicable committee exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers, in determining the amount of the reserve fund, the amount shall be considered adequate.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments (including amounts to which the Owners Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated

through the levy of Base Assessments and Special Benefited Area Assessments pursuant to Section 12.2(b) and Section 12.2(c).

(b) Calculation of Base Assessments. Upon determining the total amount of income required to be generated through the levy of base assessments (“**Base Assessments**”), the Owners Association shall allocate such amount among all Parcels and Sub-Units subject to assessment on the effective date of the budget as follows, as a Base Assessment against such Parcels and Sub-Units:

(i) except as otherwise provided in a Supplement, the Universal Residential Common Expenses as set forth in the Universal Residential Common Expense Budget shall be allocated pro-rata among the Residential Parcels (based on the number of Equivalent Units assigned to each such Parcel as described in Exhibit “D”), the Residential Uses on Mixed Use Parcels (based upon the assignment of Equivalent Units attributable to such Residential Uses as described in Exhibit “D”), and the Residential Uses (including Restricted Residential Projects) on Restricted Residential Parcels (also based upon the assignment of Equivalent Units attributable to Residential Uses as described in Exhibit “D”);

(ii) except as otherwise provided in a Supplement, the Standard Residential Common Expenses as set forth in the Standard Residential Common Expense Budget shall be allocated pro-rata among the Residential Parcels (based on the number of Equivalent Units assigned to each such Parcel as described in Exhibit “D”), Residential Uses other than Restricted Residential Uses on Restricted Residential Parcels (also based on the number of Equivalent Units assigned to each such Parcel as described in Exhibit “D”), and the Residential Uses on Mixed Use Parcels, (also based upon the assignment of Equivalent Units attributable to Residential Uses as described in Exhibit “D”);

(iii) except as otherwise provided in a Supplement, the Non-Residential Common Expenses as set forth in the in the Non-Residential Common Expense Budget shall be allocated pro-rata among the Non-Residential Parcels (based on the number of Equivalent Units assigned to each such Parcel as described in Exhibit “D”) and the Non-Residential Uses on Mixed Use Parcels (also based upon the assignment of Equivalent Units attributable to such Non-Residential Uses as described in Exhibit “D”); and

(iv) except as otherwise provided in a Supplement, the General Common Expenses as set forth in the General Common Expense Budget shall be allocated pro-rata among all Parcels based upon the assignment of Equivalent Units as described in Exhibit “D”.

In the case of a Parcel containing Sub-Units, the Base Assessments so allocated to such Parcel shall then be allocated amongst all Sub-Units within such Parcel pro-rata, based upon the number of Equivalent Units assigned to each such Sub-Unit in relation to the total number of Equivalent Units assigned to all Sub-Units within such Parcel, except that (1) in the case of a Mixed Use Parcel containing Residential Sub-Units, Base Assessments levied against the Parcel with respect to Universal Residential Common Expenses shall be allocated amongst the Residential Sub-Units within the Parcel pro-rata, based upon the number of Equivalent Units

assigned to each such Residential Sub-Unit in relation to the total number of Equivalent Units assigned to all Residential Sub-Units within such Parcel, (2) in the case of a Mixed Use Parcel containing Residential Sub-Units, Base Assessments levied against the Parcel with respect to Standard Residential Common Expenses shall be allocated amongst the Residential Sub-Units within the Parcel pro-rata, based upon the number of Equivalent Units assigned to each such Residential Sub-Unit in relation to the total number of Equivalent Units assigned to all Residential Sub-Units within such Parcel, excluding in each case, Equivalent Units attributable to any Restricted Residential Project upon any Restricted Residential Parcel, and (3) in the case of a Mixed Use Parcel containing Non-Residential Sub-Units, Base Assessments levied against the Parcel with respect to Non-Residential Common Expenses shall be allocated amongst the Non-Residential Sub-Units pro-rata, based upon the number of Equivalent Units assigned to each such Non-Residential Sub-Unit in relation to the total number of Equivalent Units assigned to all Non-Residential Sub-Units within such Parcel.

(c) **Calculation of Special Benefited Area Assessments.** The total Special Benefited Area Expenses budgeted for each Special Benefited Area, less any surplus in such Special Benefited Area budget from prior years, shall be allocated and levied pro-rata among all Parcels and Sub-Units, as applicable, in the Special Benefited Area as a “**Special Benefited Area Assessment.**” Unless otherwise specified in any Supplement applicable to a Special Benefited Area, Special Benefited Area Assessments shall be allocated and levied pro-rata based upon the assignment of Equivalent Units to each Parcel and Sub-Unit as described in Exhibit “D” or in a Supplement.

In the case of Special Benefited Area Assessments levied against a Parcel as a whole, the Special Benefited Area Assessments levied against the Parcel shall then be allocated amongst all Sub-Units within such Parcel pro-rata, based upon the number of Equivalent Units assigned to each such Sub-Unit in relation to the total number of Equivalent Units assigned to all Sub-Units within such Parcel. In the case where fewer than all of the Sub-Units within a Parcel are members of the Special Benefited Area, the Special Benefited Area Assessment shall be levied against only the Sub-Unit Owners of the Sub-Units within such Parcel which are part of the Special Benefited Area, pro-rata based upon the number of Equivalent Units assigned to them.

All amounts the Owners Association collects as Special Benefited Area Assessments shall be held in trust for and expended solely for the benefit of the Special Benefited Area for which they were collected and shall be accounted for separately from the Owners Association’s general funds.

(d) **Declarant Subsidy Option.** Declarant may, but shall not be obligated to, reduce the Base Assessment or any Special Benefited Area Assessment for any fiscal year by payment of a subsidy (in addition to any amounts payable by Declarant or Declarant Affiliates with respect to Parcels and Sub-Units which they may own). Such subsidy may, in Declarant’s discretion, cover all or any portion of any Common Expense or Special Benefited Area Expense. Any such subsidy may be treated as a contribution or a loan to the Owners Association, in Declarant’s discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the Common Expense Budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future

years, unless otherwise provided in a written agreement between the Owners Association and Declarant.

(e) **Notice of Budget and Assessment.** At least thirty (30) days before the Common Expense Budget becomes effective, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment and any Special Benefited Area Assessment to be levied pursuant to such budget, to the Parcel Owner of each Parcel responsible for a share of the expenses covered by the Common Expense Budget, including to the Parcel Owner of a Parcel which contains Sub-Units which are part of a Special Benefited Area or which are otherwise subject to assessments. Notice of the Common Expense Budget, any Special Benefited Area Budget, or the levy of any assessments to a Parcel Owner (including notice of assessments levied against individual Sub-Unit Owners) shall constitute effective notice to all Owners of Sub-Units within the Parcel Owner's Parcel.

If the Board fails for any reason to determine the budget for any year, then the last approved budget shall continue in effect until a new budget is determined, provided, that upon determination of the new budget, the Owners Association may retroactively assess any shortfall between the old and new budgets.

(f) **Budget Revisions.** The Board may revise the Common Expense Budget and/or budgets for Special Benefited Area Expenses at any time during the year, and adjust the Base Assessment and/or Special Benefited Area Assessments at any time during the year, subject to the same notice requirements set forth in Section 12.2(e) above.

12.3. Special Assessments

The Owners Association may levy "**Special Assessments**" to cover Common Expenses or Special Benefited Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget.

Except as otherwise specifically provided in this Declaration of Community Covenants, any Special Assessment for Universal Residential Common Expenses or Standard Residential Common Expenses shall require the approval of the Residential Committee, and any Special Assessment for Non-Residential Common Expenses shall require the approval of the Non-Residential Committee. Any Special Assessment for General Common Expenses shall require the approval of the Board. All Special Assessments for Common Expenses shall be allocated among and levied against the Parcels and Sub-Units, as applicable, in the same manner as Base Assessments under Section 12.2(b). Any Special Assessment for Special Benefited Area Expenses shall require the approval of the applicable Special Benefited Area Committee, and shall be allocated among and levied against the Parcels and Sub-Units within the Special Benefited Area in the same manner as Special Benefited Area Assessments under Section 12.2(c). In addition, during the Declarant Control Period, any Special Assessment shall also be subject to Declarant's written consent.

Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the

Special Assessment is approved. Notice of any Special Assessments to a Parcel Owner shall constitute effective notice to all Owners of Sub-Units within the Parcel Owner's Parcel.

12.4. Specific Assessments

In addition to other instances for which a Specific Assessment is authorized under this Declaration of Community Covenants, the Owners Association may levy "**Specific Assessments**" against particular Parcels or Sub-Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to particular Parcels or Sub-Units or to Members within particular classes or subclasses of Members pursuant to Chapter 10;

(b) to cover the costs, including overhead and administrative costs, of providing services to the particular Parcels or Sub-Units pursuant to any menu of optional services which the Owners Association may offer (which may be levied in advance of the provision of the requested service);

(c) in the case of an Improved Parcel, to cover the charges for services provided to all Improved Parcels pursuant to Chapter 10;

(d) to cover costs incurred in bringing a Parcel or Sub-Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of a Parcel or Sub-Unit Owner or Occupants of a Parcel or Sub-Unit, their agents, contractors, employees or licensees; however, the Board shall give the Parcel Owner or Sub-Unit Owner prior written notice and an opportunity for a hearing in accordance with the Governing Documents, before levying any Specific Assessment under this section;

(e) to cover each applicable Parcel's or Sub-Unit's pro-rata share of any costs that the Owners Association incurs in bringing a particular Special Benefited Area (or any Special Use Area assigned to such Special Benefited Area) into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Parcel Owners of Parcels and Sub-Unit Owners of Sub-Units (through their respective Parcel Associations) in the Special Benefited Area and an opportunity for such Parcel Owners and Sub-Unit Owners to be heard before levying any such assessment;

(f) to cover any deductible assessed pursuant to Section 11.2; and

(g) to cover any other amounts, including fines, that the Governing Documents authorize the Owners Association to charge to a particular Parcel Owner or Sub-Unit Owner or levy against any particular Parcel or Sub-Unit.

In the case of Specific Assessments levied against Sub-Units within a Parcel, notice of any Specific Assessments to the Parcel Owner shall constitute effective notice to all Owners of Sub-Units within the Parcel.

12.5. Authority to Assess Parcel Owners; Time of Payment

The Owners Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to a Parcel and any Sub-Unit within the Parcel on the date specified in a Supplement and if no such date is specified, then on the date the Parcel or Sub-Unit is made subject to this Declaration of Community Covenants and is not exempt under Section 12.9. In addition, Declarant during the Declarant Control Period and thereafter the Board may require the payment of a “start-up” assessment equal to up to two months of Base Assessment upon the first sale, lease or transfer of a Parcel or Sub-Unit by Declarant, a Declarant Affiliate or the Parcel Developer. As of the time assessments commence on any Parcel or Sub-Unit, and continuing thereafter until the Owners Association’s next budget is prepared, the assessments levied on such Parcel or Sub-Unit shall be a prorated amount of the annual budgeted assessments, and no adjustments shall be made in any assessments payable by any other Parcel or Sub-Unit until the next annual budget is prepared.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel or Sub-Unit and impose special requirements for Owners with a history of delinquent payment (two or more delinquent payments in the past). Unless the Board otherwise provides, the Base Assessment and any Special Benefited Area Assessment shall be due and payable in advance on the first day of each fiscal year; provided, the Board may permit assessments to be paid in two or more installments.

If any Owner is delinquent in paying any assessments or other charges levied on its Parcel or Sub-Unit, the Board may require all outstanding balances on all assessments to be paid in full immediately.

12.6. Obligations for Assessments

(a) Personal Obligation of Owners and Liens. Except to the extent further allocated to the Sub-Units, if any, within its Parcel as provided in the Governing Documents, each Parcel Owner covenants and agrees to pay when due all assessments levied against its Parcel in accordance with the Governing Documents. Each Sub-Unit Owner covenants and agrees to pay when due all assessments levied against its Sub-Unit in accordance with the Governing Documents. All assessments, together with interest (computed from its due date at a rate of one percent (1%) per month, or the highest rate permitted by Hawaii law, if less than 1% per month), late charges as determined by Board Resolution, costs, and reasonable attorney’s fees, shall be the personal obligation of each Owner as described in this Chapter and a lien upon each such Owner’s Parcel or Sub-Unit until paid in full. In all such events the Owners Association’s lien shall not constitute a blanket lien prohibited by HRS Section 514B-45.

In the case of a Parcel containing Sub-Units, each Owner of a Sub-Unit within the Parcel shall pay to its Parcel Association all assessments levied against its Sub-Unit, including its allocated share of Base Assessments, Special Benefited Area Assessments, and Special Assessments as described in Section 12.2(b), Section 12.2(c) and Section 12.3, and also including the full amount of any Special Benefited Area Assessment or Specific Assessment

specifically levied against it or its Sub-Unit, and shall cause its Parcel Association to pay all such assessments to the Owners Association.

A Sub-Unit Owner may release its Sub-Unit from the Owners Association's lien for assessments upon payment to the Owners Association of such Sub-Unit Owner's allocated share of Base Assessments, Special Benefited Area Assessments, and Special Assessments as set forth in Section 12.2(b), Section 12.2(c), and Section 12.3, and the full amount of Specific Assessments specifically levied against it or its Sub-Unit. However, the release of any individual Sub-Unit from the Owners Association's lien for assessments shall not be a waiver of the Owners Association's right to pursue payment of all unpaid assessments and other charges from the Parcel Owner and/or other Sub-Unit Owners.

The Board's failure to fix assessment amounts or rates or to deliver or mail an assessment notice shall not be deemed a waiver, modification, or a release of any Parcel Owner or Sub-Unit Owner from the obligation to pay assessments. In such event, each Parcel Owner and Sub-Unit Owner shall continue to pay assessments at the last established assessment rate, if any, until a new assessment is levied, at which time the Owners Association may retroactively assess any shortfall.

No Parcel Owner or Sub-Unit Owner shall be exempt from liability for assessments by non-use of any portion of the Area of Common Responsibility, abandonment of a Parcel or Sub-Unit, or non-use of services provided within the Special Benefited Area to which a Parcel or Sub-Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Owners Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

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

(b) Parcel Association's Obligation for Assessments. Each Parcel Association shall collect and remit to the Owners Association all assessments payable with respect to its Parcel. Each Parcel Association shall also, as agent for its Sub-Unit Owners, collect and remit to the Owners Association all assessments levied against the Sub-Unit Owners or Sub-Units within its Parcel.

Each Parcel Association shall keep accurate records of all Owners Association assessments payable by its Sub-Unit Owners and shall collect and remit all such assessments to the Owners Association. Each Parcel Association shall make such records available to the Owners Association at no charge upon request and shall cooperate with the Owners Association in enforcing its lien rights and each Owner's obligation to pay assessments to the Owners Association.

(c) **Declarant's Financial Obligations to Owners Association.** Except as otherwise provided in this Declaration of Community Covenants, Declarant and Declarant Affiliates shall be liable for assessments on any Parcels or Sub-Units that they own, and the Owners Association shall have a lien on such Parcels and Sub-Units in the manner provided in this Declaration of Community Covenants. However, during the Declarant Control Period, Declarant may satisfy the obligation to pay Base Assessments, Special Assessments, and Special Benefited Area Assessments on Parcels and Sub-Units owned by Declarant or a Declarant Affiliate (and thereby avoid such Owners Association lien) either: (i) by paying such assessments in the same manner as any other Parcel Owner or Sub-Unit Owner; or (ii) by paying any shortfall under the Common Expense Budget or a Special Benefited Area Expense budget, as applicable, resulting from events other than failure of other Parcel Owners or Sub-Unit Owners to pay their assessments. In the event Declarant's payments under subpart (ii) exceed what it otherwise would owe under subpart (i), such excess amount shall be treated as a Declarant subsidy under Section 12.2(d).

After termination of the Declarant Control Period, Declarant and Declarant Affiliates shall pay assessments, and the Owners Association shall have a lien, on any Parcels and Sub-Units they own that are subject to assessment under this Chapter 12 in the same manner as any other Owner liable for such assessments.

Regardless of Declarant's election under this Section, any of Declarant's financial obligations to the Owners Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

12.7. Lien for Assessments

(a) **Existence of Lien.** The Owners Association shall have a lien against each Parcel and Sub-Unit (1) as provided in Section 12.6(a) to secure payment of assessments, as well as interest, late charges (subject to the limitations of Hawaii law), and costs of collection (including attorneys' fees and expenses), and (2) as provided in Section 8.2(a) and Section 8.2(c) to secure payment of any fines levied for violations of the Governing Documents. Such lien shall (a) arise automatically upon determination of assessments, fines or other sums payable to the Owners Association, (b) be effective as of the date this Declaration of Community Covenants is recorded, and (c) be superior to all other liens, except: (i) superior liens existing and perfected against a Parcel or Sub-Unit prior to the date that such Parcel or Sub-Unit is made subject to this Declaration of Community Covenants, (ii) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (iii) the lien or charge of any recorded Mortgage made in good faith and for value which is recorded prior to the date that a Notice of Lien setting forth the amounts owed to the Owners Association (as described below) is recorded.

Although no further action is required to create or perfect the lien, the Owners Association may, as further evidence and notice of the lien, execute and record a document (a "**Notice of Lien**") setting forth as to any Parcel or Sub-Unit the amount of the assessments, fines or other sums due the Owners Association at the time such Notice of Lien is executed and the fact that a lien exists to secure the repayment thereof. Such Notice of Lien may also confirm that such lien became effective and attached to such Parcel or Sub-Unit as of the date that such Parcel or Sub-Unit was made subject to this Declaration of Community Covenants. The Owners Association may also execute and record successive or additional Notices of Lien for additional

amount of assessments, fines or other sums owed to the Owners Association. However, the failure of the Owners Association to execute and record any such Notice of Lien shall not affect the validity, enforceability, or priority of the Owners Association's lien, except as provided in this Declaration of Community Covenants in respect of priority in relation to recorded mortgage liens.

(b) Enforcement of Lien. The Owners Association may foreclose upon its lien by judicial action. The Owners Association's lien may also be foreclosed by non-judicial or power of sale foreclosure proceedings as may be permitted under Hawaii law. The Owners Association may bid for the Parcel or Sub-Unit, as the case may be, at any such foreclosure action or proceeding, and acquire, hold, lease, mortgage or otherwise encumber, and convey the Parcel or Sub-Unit. While a Parcel or Sub-Unit is owned by the Owners Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) its assessment obligations shall be abated; and (iii) such abated assessment shall be deemed to be Common Expenses or Special Benefited Area Expense collectible as provided in this Chapter 12 from all Owners subject to such assessments, including any Owner who acquires the delinquent Owner's Unit or Sub-Unit.

The Owners Association may sue for unpaid assessments, fines, and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) Effect of Sale or Transfer. No voluntary or involuntary sale or transfer of any Parcel or Sub-Unit shall relieve the selling or transferring Owner of its personal obligation to pay any assessments or fines levied or assessed against it or its Parcel or Sub-Unit prior to the conveyance of its Parcel or Sub-Unit.

Voluntary sale or transfer of any Parcel or Sub-Unit shall not affect the Owners Association's lien or relieve such Parcel or Sub-Unit from the lien for any assessments or fines. In addition, in the case of a voluntary conveyance, the selling or transferring Owner shall continue to be personally responsible for assessment obligations which accrue and fines which are assessed before the conveyance and written notice of conveyance is delivered to the Board, and the subsequent Owner of any transferred or sold Parcel or Sub-Unit shall be personally liable to pay any assessments which accrue and fines which are assessed after the conveyance. Both the transferee and transferor shall, to the extent permitted by law, be jointly and severally liable for all unpaid assessments and fines from the conveyance up to the time written notice of the conveyance is given to the Board.

Involuntary sale or transfer of any Parcel or Sub-Unit shall not affect the Owners Association's lien or relieve such Parcel or Sub-Unit from the lien for any assessments or fines, except that the sale or transfer of any Parcel or Sub-Unit pursuant to foreclosure of a Mortgage which is recorded prior to the date that a Notice of Lien is recorded shall extinguish the Owners Association's lien as to: (i) any installments of such assessments due prior to the foreclosure, and (ii) any fines levied against the selling or transferring Owner. The subsequent Owner of any such foreclosed Parcel or Sub-Unit shall not be personally liable for any assessments on such Parcel or Sub-Unit due prior to its acquisition of title or for any fines levied against the selling or transferring Owner, but the prior Owner shall continue to be personally responsible for

assessment obligations which accrue and fines which are assessed against it before the foreclosure.

Any unpaid assessments at the time of voluntary or involuntary sale or transfer of a Parcel or Sub-Unit may be deemed by the Board to be Common Expenses or Special Benefited Area Expenses collectible as provided in this Chapter 12 from all Owners subject to assessments, including any Owner who acquires a delinquent Owner's Parcel or Sub-Unit.

12.8. Use and Consumption Fees

Without limiting any other provision of this Declaration of Community Covenants, the Owners Association may offer services or facilities for which it does not recover its costs through assessments under this Chapter. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Parcel Owners, Sub-Unit Owners, and non-Owners), or classes or subclasses of Memberships.

12.9. Exempt Property

The following property shall be exempt from payment of Base Assessments, Special Benefited Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) All undeveloped Parcels or Sub-Units owned by Declarant or a Declarant Affiliate and all unoccupied or unused Sub-Units or Parcels owned by Declarant or a Declarant Affiliate; and
- (c) All Civic Parcels.

In addition, either Declarant or the Board (with the approval of the Declarant during the Development and Sale Period) shall have the right, but not the obligation, from time to time to grant full or partial exemptions to Community Support Parcels. Exemptions granted by Declarant shall be binding on the Owners Association. Exemptions granted by the Owners Association are subject to approval by Declarant during the Declarant Control Period.

Declarant, in its capacity as Declarant Member during the Declarant Control Period, shall also be exempt from the payment of Base Assessments, Special Benefited Area Assessments and Special Assessments.

**PART FOUR: RIGHTS, RESPONSIBILITIES AND RELATIONSHIPS WITHIN AND
OUTSIDE KOA RIDGE; DISCLOSURES AND RESPONSIBILITIES REGARDING
KOA RIDGE**

**Chapter 13
Easements**

13.1. Easements in Area of Common Responsibility

Declarant hereby grants to each Owner and the permitted users of each Parcel and Sub-Unit within the Community a non-exclusive right and easement of use, access, and enjoyment of the Area of Common Responsibility, subject to:

- (a) The Governing Documents and any other applicable covenants or restrictions;
- (b) Any restrictions or limitations contained in any deed, lease, easement or license conveying property or rights of use to the Owners Association or in any Supplement, including any rights reserved by Declarant with respect to the Village Green;
- (c) The rights of governmental authorities to regulate the use of portions of the Area of Common Responsibility including portions of the Area of Common Responsibility belonging to or dedicated to public authorities;
- (d) The use of the Village Green or other portions of the Area of Common Responsibility by the general public or third parties pursuant to this Declaration of Community Covenants or pursuant to permits, licenses, rights or easements in any document, agreement or covenant binding upon Declarant or the Owners Association;
- (e) The holding of street fairs or festivals or other public or private events within the Village Green and other portions of the Area of Common Responsibility (i) by Declarant during the Declarant Control Period, or (ii) by the Board with the approval of the Declarant during the Declarant Control Period;
- (f) The Board's right, subject to the provisions of this Declaration of Community Covenants or any other Governing Document, to:
 - (i) adopt rules and policies regulating use and enjoyment of the Area of Common Responsibility;
 - (ii) cause the Owners Association to maintain, repair and restore the Area of Common Responsibility and to otherwise perform its obligations under the Governing Documents with respect thereto;
 - (iii) cause the Owners Association to close or suspend use of portions of the Area of Common Responsibility as the Board in its discretion determines to be in the interest of the Community, or to permit the Owners Association to perform its obligations under the Governing Documents;

(iv) suspend an Owner's right to use facilities for cause or otherwise in accordance with the Governing Documents;

(v) cause the Owners Association to dedicate or transfer all or any part of the Common Area, subject to such approval requirements, if any, as may be set forth in this Declaration of Community Covenants and the other Governing Documents;

(vi) cause the Owners Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(vii) exercise its rights and authority set forth in this Declaration of Community Covenants and other Governing Documents;

(g) Subject to the Declarant's prior approval during the Declarant Control Period, the Residential Committee's rights to control the use, maintenance and improvement of, and to adopt rules and regulations governing, the Residential Area of Common Responsibility as set forth in this Declaration of Community Covenants;

(h) Subject to the Declarant's prior approval during the Declarant Control Period, the Non-Residential Committee's rights to control the use, maintenance and improvement of, and to adopt rules and regulations governing, the Non-Residential Area of Common Responsibility as set forth in this Declaration of Community Covenants;

(i) Subject to Declarant's prior approval during the Declarant Control Period, the rights of the various Special Benefited Area Committees to control the use, maintenance and improvement of, and to adopt rules and regulations governing, those portions of the Area of Common Responsibility designated as Special Use Areas as set forth in this Declaration of Community Covenants;

(j) The designation of portions of the Area of Common Responsibility as reserved by the Board or Declarant for Owners Association use relating to maintenance, operations, or administration of the Owners Association (e.g., equipment, mechanical, or utility rooms, storage areas, and other areas not intended for general use and enjoyment);

(k) All rights contained in this Declaration of Community Covenants or other Governing Documents with respect to the Village Green and other portions of the Area of Common Responsibility; and

(l) Such other rights reserved by Declarant or granted to the Owners Association and the Board under this Declaration of Community Covenants and other Governing Documents.

13.2. Easements Over Parcels

(a) **Association Maintenance Walls.** Declarant (i) hereby reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to others, and (ii) hereby grants to the Owners Association and its successors and assigns, (A) an easement over those portions of each Parcel located within three (3) feet of any Association

Maintenance Wall for the purpose of accommodating footings and other structural components of such Association Maintenance Wall, including any encroachments thereof onto the Parcel; and (B) an easement of access, ingress and egress over the Parcel, reasonably necessary for the maintenance, repair and replacement of Association Maintenance Walls and related improvements.

(b) Central Telecommunication Receiving and Distribution System. Declarant reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to the Owners Association and others, the perpetual right and easement over all Parcels within Koa Ridge to construct, install, use, maintain, repair, replace, improve, remove, operate, and access such telecommunication (including cable television, high speed data/Internet/intranet services, cellular telephone, and satellite television) receiving and distribution apparatus and equipment (“**Telecommunications Systems**”) as Declarant, in its reasonable discretion, deems appropriate. Declarant’s rights and easements under this Section 13.2(b) shall include, but not be limited to, the right to place components of Telecommunications Systems on rooftop areas and the right to reasonably access such systems through the structures on which the Telecommunication Systems are placed.

(c) Parking Facilities. One or more Parcels containing parking facilities may be made available in whole or in part for use by all or some of the Owners within the Community, or by Persons other than Owners within the Community (e.g., parking facilities may be available for use by other Parcel Owners or Occupants, the owners or occupants of properties adjacent to or otherwise in the vicinity of Koa Ridge, or the general public). Any such parking facilities may be designated as Area of Common Responsibility or Special Use Area to be owned, operated, and/or maintained by the Owners Association. Declarant reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to the Owners Association and others, such rights and easements, including easements of access, ingress, and egress over any such parking area within the Area of Common Responsibility or any Special Use Area, as are necessary or appropriate in connection with the maintenance, operation, and administration of such parking facilities.

(d) Security Systems. Declarant (i) hereby reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to assign or grant to others, and (ii) hereby grants to the Owners Association and its successors and assigns, the perpetual right and easement over all Parcels within Koa Ridge to install, use, maintain, repair, replace, improve, remove, operate, and access such security-related equipment, including video and other monitoring or surveillance equipment, as any of such benefited parties, in its reasonable discretion, deems appropriate. The rights and easements under this Section 13.2(d) shall include, but not be limited to, the right to place such equipment on or within structures on Parcels and the right to reasonably access such equipment within such structures.

(e) Emergency Warning Systems. Declarant (i) hereby reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to others, and (ii) hereby grants to the Owners Association and its successors and assigns, the perpetual right and easement over all Parcels within Koa Ridge to install, use, maintain, repair, replace, improve, remove, operate, and access such emergency warning and civil defense warning systems, sirens and other devices, as any of such benefited parties, in their reasonable

discretion, deem appropriate. The rights and easements under this Section 13.2(d) shall include, but not be limited to, the right to place such sirens, equipment and devices on or within structures on Parcels and the right to reasonably access such sirens, equipment and devices within such structures.

(f) Archaeological/Historical Sites. Declarant (i) reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to governmental entities and others, and (ii) hereby grants to the Owners Association and its successors and assigns, the easements described in Section 14.13, with respect to archaeological and historic sites within the Community.

(g) Location of Easements. To the extent feasible, those areas within the Parcels subject to the easement rights described in this Section shall be shown on maps maintained by the Owners Association or otherwise specifically described in a Supplement or other recorded instrument; provided, the failure to describe easement rights in such maps or a separate recorded instrument shall not affect the validity of such easements. During the Development and Sale Period, any easement of access across a Parcel may be relocated on the Parcel with the consent of Declarant and the Parcel Owner. Thereafter, the Owners Association's and Parcel Owner's consent is required to relocate such easement areas, which consent shall not be unreasonably withheld, conditioned, or delayed.

13.3. Rights of Entry and Easements for Maintenance, Inspection, Enforcement and Emergency and Community Services

(a) Declarant hereby reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to the Owners Association and others, the right during the Development and Sale Period, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, Improvement, fixture, or condition that may exist on any portion of the property within Koa Ridge, including Parcels and Sub-Units, and a perpetual non-exclusive right and easement of access throughout Koa Ridge to the extent reasonably necessary to exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Parcel Owner or Sub-Unit Owner.

(b) Declarant hereby (i) reserves unto itself, its successors and assigns, together with the right to grant to others, and (ii) grants to the Owners Association and its successors and assigns, an easement and right of entry over and into the Parcels and Sub-Units (including interior areas to the extent required) as necessary or convenient to enable the Owners Association to fulfill its maintenance, operations, and administration responsibilities, including maintenance and operation to the Area of Common Responsibility, and also including reasonable access to adjoining Area of Common Responsibility, and to permit Declarant, its designees and the Owners Association, to exercise their enforcement rights under the Governing Documents. Declarant, its designees and the Owners Association shall have the right, but not the obligation, to enter upon any Parcel or Sub-Unit, including any structure within a Parcel or Sub-Unit, for emergency, security, or safety reasons, to perform maintenance and repair, to inspect for compliance with the Governing Documents, to enforce the Governing Documents, and to operate and administer the Area of Common Responsibility. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties

may exercise such right on behalf of the Owners Association. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Parcel Owner or Sub-Unit Owner.

(c) Declarant hereby further (i) reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to others, and (ii) hereby grants to the Owners Association and its successors and assigns, perpetual, non-exclusive easements for access, ingress, and egress over any private streets within Koa Ridge, for law enforcement, firefighting, paramedic, rescue, and other emergency vehicles, equipment and personnel; for U.S. Postal Service and other package delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage or recycling collection service to Koa Ridge; provided, such easements shall not authorize any such Persons to use private streets within the Community except while acting in their official capacities.

13.4. Easements for Utilities and Other Infrastructure

Declarant hereby reserves for itself, the Declarant Affiliates, and their respective successors and assigns, together with the right to grant to the Owners Association and others, easements throughout Koa Ridge, as are reasonably necessary to:

(a) install and maintain improvements, utilities, and other infrastructure to serve Koa Ridge and the Additional Property;

(b) install and maintain walkways, pathways, trails, street lights, and signage to serve Koa Ridge and the Additional Property;

(c) install and maintain drainage control, erosion control and storm water systems to serve Koa Ridge and the Additional Property;

(d) earthscape and maintain slope areas and install improvements and take other measures to maintain slope areas within and in the vicinity of Koa Ridge and the Additional Property;

(e) inspect, maintain, repair, replace, improve and restore the Area of Common Responsibility, utilities, infrastructure, and other improvements described in clauses (a) through (d) above; and

(f) access and read utility meters.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

In addition, Declarant shall have the non-exclusive right and power to grant and record such other specific easements over the Parcels as it deems necessary to develop Koa Ridge; provided, no such easement may unreasonably interfere with the use or operation of the Parcel or any improvements to the Parcel without the written approval of the owner of the burdened property, which approval shall not be unreasonably withheld, conditioned, or delayed.

13.5. Easements and Rights of Entry to Facilitate Development and Operations

Declarant hereby reserves to itself, the Declarant Affiliates, and the employees, duly authorized agents, designees, successors, and assigns of Declarant and the Declarant Affiliates, an easement and right of entry, and the right to grant easements of access and use to others, over and upon all or any portion of Koa Ridge (but not through a structure) for the exercise of rights reserved to Declarant and the Declarant Affiliates set forth in this Declaration of Community Covenants and all other purposes reasonably related to making, constructing, and installing improvements to the Community and to the Additional Property (whether or not such property is made subject to the Declaration of Community Covenants), for the development, marketing and sale of Parcels and Additional Property, and for operation of the Community.

Such right of entry and easements include, but are not limited to: (a) a right of ingress and egress over Parcels, Sub-Units, the Common Area, and other portions of the Area of Common Responsibility for construction of roads and other improvements, including connecting and installing utilities on such property; (b) a right of ingress and egress over, and the right to use, Parcels, Sub-Units, the Common Area, and other portions of the Area of Common Responsibility for marketing and sales purposes as described in Section 18.8; (c) construction easements for each separate construction project on a Parcel or Common Area; (d) easements for installation of drainage systems, water and other utilities, slope maintenance, erosion control, and storm and sanitary sewer systems (including the right to prune or remove trees, bushes, and shrubbery, to regrade soil, and to take any similar reasonably necessary actions); (e) easements for mobilization and storage of construction equipment, materials, and supplies necessary for the construction of improvements; and (f) easements for noise, dust, and other annoyances relating to the exercise of the easements described in this Section.

13.6. Easements Between Adjacent Properties

(a) Easements of Encroachment.

Declarant hereby reserves and grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels. A permitted encroachment is a structure or fixture that extends unintentionally from one Person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. Unless considered de minimis under Hawaii law, an encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Easements of Support and Construction. Declarant hereby reserves and grants reciprocal appurtenant easements over, under, across, and between adjacent Parcels and each Parcel and any adjacent Common Area for the installation and maintenance of underpinning or other footing and foundation support systems, and sheeting, shoring, and other forms of earth retention, including tiebacks and other required components. Such easements shall permit the temporary use of adjacent properties for the construction and installation of such support systems

and the permanent use of adjacent properties for the continued placement and maintenance of such systems.

The support system(s) benefiting any Parcel shall be designed and inspected during installation and upon completion of installation, by engineers or consultants acceptable to the Reviewer. Any such support system also shall be subject to Reviewer approval in accordance with Chapter 5 and the approval of the Parcel Owner of any adjacent, burdened Parcel, which approval shall not be unreasonably withheld, conditioned, or delayed.

Every portion of a Parcel contributing to the support on any portion of any other Parcel or Common Area shall be burdened with a perpetual easement of support for the benefit of such other property.

(c) Easements for Use of Air Space. Declarant hereby reserves and grants reciprocal appurtenant easements over and between adjacent Parcels and each Parcel and any adjacent Common Area for the temporary use of air space as reasonably necessary during construction and maintenance of improvements on a Parcel. The permitted use of air space includes the right to install and use scaffolding, towers, and cranes, and the right to swing a crane and its load, over the air space of any adjacent Parcel or Common Area during the construction of improvements on a Parcel and during the maintenance, repair, cleaning, and inspection of improvements on a Parcel.

13.7. Easements for Cross-Drainage

All portions of Koa Ridge shall be burdened with easements for drainage of water runoff from other portions of Koa Ridge; and no Person shall alter the natural drainage on any Parcel from the drainage pattern initially established by Declarant or a Declarant Affiliate so as to increase materially or alter the flowage pattern of storm water to or from adjacent properties without the consent of the Parcel Owner(s) of the affected property (and the Board as to any affected Area of Common Responsibility). In addition, Declarant's consent shall be required for any such alteration during the Development and Sale Period.

13.8. Easement for and Reservation of Sub-Surface Rights

Declarant hereby reserves for itself, the Declarant Affiliates, their respective successors and assigns, together with the right to grant to others, perpetual rights to, and an easement over, under, and through Koa Ridge for drilling, mining, and other activities associated with, water, mineral, gas and other sub-surface materials; provided that no holder of any such rights shall be permitted to destroy or disturb the use of any Parcel in the exercise of such rights.

13.9. Exercise of Rights of Entry and Easements; Minimal Interference

Any Persons exercising any right or easement described in this Chapter 13 shall use reasonable efforts to minimize interference with the use and enjoyment of the Parcel, Sub-Unit or Common Area burdened by the easement. Persons exercising such right or easement shall be responsible for any damage caused to the Area of Common Responsibility or any Parcel or Sub-Unit as a result of their actions in connection with the exercise of such easement rights. Upon completion of any work pursuant to a right or easement, the Person exercising the right or

easement shall restore the property, to the extent reasonably possible, to its condition existing prior to the commencement of the work. All work performed pursuant to a right or easement under this Chapter shall be performed in a good and workmanlike manner in accordance with all applicable laws.

Except as otherwise expressly provided in this Chapter, the exercise of rights or easements under this Chapter 13 shall not extend to permitting entry into the structures on any Parcel or Sub-Unit, nor shall it unreasonably interfere with the use of any Parcel or Sub-Unit. In the case of any right or easement permitting work to be performed on a Parcel or Sub-Unit, except in an emergency, entry onto the Parcel or Sub-Unit for such purpose shall be made only after reasonable notice to the Owner and any known tenant of that portion of the Parcel or Sub-Unit for which entry is desired.

13.10. Easements Under Other Covenants and Agreements

The easements granted and reserved in this Chapter 13 and elsewhere in this Declaration of Community Covenants shall be in addition to any easements granted or reserved to third parties under leases, grants of easements or other agreements binding upon all or portions of Koa Ridge.

13.11. Termination of Easements

The easements granted and reserved in this Chapter 13 and elsewhere in this Declaration of Community Covenants shall not be altered or terminated during the Development and Sale Period without Declarant's written consent.

Chapter 14

Disclosures and Waivers

14.1. Facilities and Services Open to the Public

Certain facilities and areas within Koa Ridge may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: roads, sidewalks, bicycle paths, parks, the Village Green (subject to the discretion and control of Declarant and/or the Board as provided in this Declaration of Community Covenants), and other gathering areas. Areas may become open to the public by dedication to public use or dedication of ownership and/or maintenance responsibility to, or by agreement with, the City and County of Honolulu or another governmental or quasi-governmental entity. During the Development and Sale Period, Declarant may dedicate such areas to the public or may designate such facilities and areas as open to the public prior to their being conveyed to the Owners Association or a Parcel Owner, as applicable. Thereafter, the Board may designate portions of the Area of Common Responsibility as being available for public use at any time, subject to such regulations and restrictions on use as the Board may impose.

14.2. No Liability for Third Party Acts

Each Owner and Occupant of a Parcel or Sub-Unit, including such Owner's respective guests and invitees, shall be responsible for its own personal safety and the safety of its employees, patrons, and guests, and the security of its property in Koa Ridge. Declarant and the Owners Association may maintain or sponsor certain services and activities within Koa Ridge, and/or may coordinate with the City and County of Honolulu and law enforcement personnel with respect to such services and activities, designed to promote or enhance the level of safety or security which each person provides for itself and its property. Such services or activities may include, without limitation, video monitoring and surveillance, emergency and civil defense warning systems, and police presence with Koa Ridge. However, none of the Owners Association, the Board, any association committee, Declarant, any Declarant Affiliate, or any of their respective officers, directors, members, employees or agents shall in any way be considered an insurer or guarantor of safety or security within Koa Ridge, nor shall any such person or entity be held liable for any loss or damage by reason of failure to provide adequate security or emergency or civil defense warning, or ineffectiveness of security or warning measures undertaken.

No representation or warranty is made that any systems or measures, including any security monitoring system, emergency or civil defense warning system, or any mechanism or system for limiting access to any portion of Koa Ridge, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other Occupants of its Parcel or Sub-Unit, that the Owners Association, the Board and Association committees, Declarant, and the Declarant Affiliates are not insurers or guarantors of security or safety and that each Person within Koa Ridge assumes (i) all risks of personal injury and loss or damage to property resulting from emergencies or acts of third parties, (ii) responsibility for procuring such insurance as may be available or desirable to cover any such risk, and (iii) the

responsibility for implementing such security measures and safety precautions as may be available or desirable to cover any such risk.

14.3. Changes in Master Plan

Each Owner, Occupant, Parcel Association and the Owners Association each acknowledges that Koa Ridge is a master planned community, the development of which is likely to extend over many years and the particulars of which are likely to change from time to time, and each such party acknowledges and accepts the matters described in this Section 14.3 relating to potential changes in the Master Plan and uses contemplated by the Master Plan. The creation and approval of the Master Plan and the use, disclosure or dissemination of the Master Plan or any of the various components of the Master Plan do not constitute a representation or guarantee that the Master Plan as a whole or any item or matter referenced or approved in the Master Plan will be built or otherwise accomplished, that the uses proposed in the Master Plan will be implemented as proposed, or that other uses will not be substituted for or permitted or restricted in lieu of uses previously permitted, required or restricted. Rather, the Master Plan is a planning tool based upon assumptions, projections and circumstances which are subject to change. At any time, the Master Plan serves as a guide to the development of the Koa Ridge Community, but the Master Plan itself is not an inflexible or mandatory prescription or prediction of development of Koa Ridge or any element of the Community.

Each Owner, each Occupant, each Parcel Association and the Owners Association each acknowledges that the Master Plan and the various components of the Master Plan in existence at the time of the recording of this Declaration of Community Covenants may be subject to expiration, delays, or amendment, and each such party agrees that neither changes to the Master Plan nor delays in development or the expiration of the Master Plan without development of the Community as a whole or any element of the Master Plan shall give rise to any liability or claim based upon reliance upon or expectation with respect to the Master Plan or any component thereof. As such, the Owners Association shall not, without Declarant's prior written consent, engage in, or use Owners Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses, density, form, or massing of property within Koa Ridge; (b) changes in the Master Plan, including any extension of the time during which the Master Plan shall remain in effect; or (c) the creation or formation of a new Master Plan following the expiration of a previous or existing Master Plan.

14.4. Assignment of Rights and Obligations under the Master Plan

All or any of the rights and obligations granted or imposed under the Master Plan shall be freely assignable or transferable and may be delegated by Declarant to third parties, including the Owners Association, subject to such notice or consent as may be required under the Master Plan.

14.5. View, Solar or Wind Impairment

None of Declarant, any Declarant Affiliate or the Owners Association guarantees or represents (a) that any view over and across any property within or outside Koa Ridge will be preserved without impairment or modification, (b) that access to sunlight to any property within or outside Koa Ridge will be preserved without impairment or modification, or (c) that wind

patterns over and across any property within or outside Koa Ridge will be preserved without impairment or modification.

14.6. Contaminated Soils

Portions of Koa Ridge may have been used in the past for agriculture or other purposes and may contain contaminated sub-surface soils and groundwater that may require remediation prior to development activities taking place. Each Parcel Developer and each Owner shall be responsible for determining the existence of contaminated soils and groundwater on its Parcel or Sub-Unit and for complying with such remediation requirements as may be imposed. Declarant, Declarant Affiliates, and the Owners Association shall have no obligation to remediate contaminated soils or groundwater on any Parcel or Sub-Unit except as may otherwise be required under a separate governmental order, covenant, or agreement binding upon Declarant, Declarant Affiliates, or the Owners Association.

14.7. Public Entertainment Activities

Each Owner, by acceptance of ownership of a Parcel or Sub-Unit, acknowledges that Koa Ridge may include various public attractions and that public activities and events, such as festivals, outdoor concerts, and similar activities and events, may be held within Koa Ridge, including within the Village Green and other portions of the Area of Common Responsibility. Each Owner acknowledges that such events and activities may result in annoyances, nuisances, inconveniences, or hazards to persons and on property in the vicinity of such events and activities.

Each Owner covenants, on behalf of itself, its heirs, personal representatives, successors, and successors-in-title, and all Occupants of its Parcel or Sub-Unit, that it shall assume all risks associated with its use and ownership of property in the Community, including but not limited to, the risk of property damage or personal injury arising from or incidental to such public entertainment activities, and the risk of annoyance, nuisance, inconvenience and hazard from such public entertainment activities.

14.8. Relationship with Governmental and Tax-Exempt Organizations

The Owners Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements to, state or local governments, school systems, public utility providers, and nonprofit, tax-exempt organizations for the benefit of the Community as a whole, for the benefit of Improved Parcels only, for the benefit of one or more classes or subclasses of Members, or for the benefit of one or more Special Benefited Areas, or to Owners and Occupants of particular Parcels and/or Sub-Units. The Owners Association may contribute money, real property (including Common Area), personal property, or services to any such entity. The cost of such agreements, programs and contributions shall be allocated and assessed against the Owners as a whole or the benefited Owners, Parcels and Sub-Units in the manner described in Section 10.1.

14.9. Right to Designate Sites for Governmental and Public Interests

During the Development and Sale Period, Declarant may designate and convey sites within Koa Ridge for government, education, or other civic and community support activities and interests, including fire, police, and utility facilities, schools and educational facilities, houses of worship, community-wide parks, recreational facilities, and other public facilities. Subject to the approval requirements set forth in Section 19.3, the sites may include Community Support Parcels, Civic Parcels, Area of Common Responsibility, and/or Common Area, in which case the Owners Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant. Some of the sites may be exempt from payment of Base Assessments, Special Benefited Area Assessments and Special Assessments.

14.10. Excavation and Other Construction and Development Activities

All Owners, Occupants, and users of Parcels or Sub-Units are hereby placed on notice that Declarant, Declarant Affiliates, Parcel Developers, the Owners Association, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct excavation, construction, and other development activities within or in the vicinity of Koa Ridge and the Additional Property, which may cause increased traffic, noise, smells, windblown dust, and other annoyances typically associated with such activities and that such activities and annoyances may impact the use and enjoyment of the Parcels and Sub-Units.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of Koa Ridge, the Owners and all Occupants and users of Parcels or Sub-Units acknowledge, stipulate, and agree: (a) that such excavation and other construction activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenant or at law generally, regardless of their impact upon a Parcel or Sub-Unit; and (b) not to enter upon, or allow their pets, children, or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in the vicinity of Koa Ridge or the Additional Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours).

Declarant, Declarant Affiliates, Parcel Developers, the Owners Association, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless by the Owners, Occupants and other users of Parcels and Sub-Units for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities.

14.11. Compliance with Governmental Permits and Approvals

Koa Ridge is subject to various governmental permits and approvals issued in connection with the development and use of the Community and Additional Property, including, without limitation, the State Land Use Conditions and the Zoning Ordinance described in Section 15.1. Each Owner shall be bound by the terms of all applicable permits and approvals and such

permits and approvals shall apply to and shall bind the Owners in accordance with their terms, notwithstanding anything to the contrary in the Governing Documents. Each Owner is responsible for determining which governmental permits and approvals apply to its Parcel or Sub-Unit and the extent to which they apply.

14.12. Community Living

Koa Ridge contains and is surrounded by a variety of residential, commercial, and other uses. Life in Koa Ridge will include noises, smells, lights, sights, and behavior normally associated with such uses. While the use and conduct restrictions set forth in this Declaration of Community Covenants and the Rules are intended to enhance life-style and contribute to each Person's enjoyment of his or her property within Koa Ridge, they will not and are not intended to eliminate or mitigate all conditions and behaviors normal and customary to community environments and to permitted uses within Koa Ridge.

14.13. Archaeological/Historical Sites

There are or may be archaeological and historical sites, including burial sites, within Koa Ridge ("Sites") that may interfere with the development and construction of improvements and/or require periodic protection and maintenance by the owner of the property on which such Sites are located or other third parties. Some Sites may have been identified; however, others may exist that have yet to be discovered. The Sites that have yet to be discovered may be located on Parcels, Sub-Units, Common Area or Area of Common Responsibility.

Declarant (i) hereby reserves for itself, the Declarant Affiliates, their respective successors and assigns, together the right to grant to others, including to any governmental authority having jurisdiction over such Sites, and (ii) hereby grants to the Owners Association and its successors and assigns, a nonexclusive perpetual easement over the Common Area, Parcels and Sub-Units as required or deemed necessary to: (a) travel to and from the Sites; (b) inspect, evaluate, perform data recovery, maintain, and preserve the Sites from time to time; and (c) comply with federal and Hawaii law or the requirements of any governmental or quasi-governmental entity that has jurisdiction over matters involving such Sites. Such easement shall affect only such portions of the Common Area, Parcels and/or Sub-Units as are reasonably necessary for such purposes and may be subject to such reasonable terms, conditions and restrictions that Declarant or the Owners Association may adopt consistent with Federal and Hawaii law.

In addition to the provisions of Section 15.3(g), Owners should exercise caution to avoid disruption of Sites and should take no action to prevent or hinder access to Sites. Persons using easements pursuant to this Section should do so in a careful, considerate, and conscientious manner and take reasonable steps to avoid disturbing Owners and the Sites.

Neither Declarant nor the Owners Association shall have any liability for any damages, increased construction costs, diminution of value, or delays caused by the existence of, or the discovery of, a Site or the designation or use of an easement related to such Site.

14.14. High Voltage Powerlines

Hawaiian Electric Company, Inc. and its successors and assigns (“**HECO**”) maintains overhead and underground electric power lines of various capacities within or in the vicinity of Koa Ridge and the Additional Property. Portions of certain Parcels, the Common Area and the Area of Common Responsibility may be subject to easements in favor of HECO, including a grant of easement dated November 30, 1961, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 4184 at Page 290 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Numbers 283541 and 283542. Owners, Occupants and the Owners Association shall have the obligation to recognize and abide by such electrical easements and the terms and conditions contained in HECO’s easement documents. Such terms and conditions may include restrictions and limitations on improvements and structures within HECO’s easement areas, obligations not to interfere with HECO’s use of its easements, and obligations to accept and comply with HECO’s rights to build, construct, reconstruct, rebuild, repair, maintain and operate poles, towers, wires, guys and other applicable appliances and equipment, and to accept and comply with HECO’s rights to access the same over surrounding lands. The Owners Association and each Owner and Occupant acknowledges and accepts the effects of all such overhead and underground power lines and easements.

14.15. Waiahole Ditch

The Waiahole Ditch carries irrigation water and traverses lands within or in the vicinity of Koa Ridge and the Additional Property. Portions of certain Parcels, the Common Area and Area of Common Responsibility are subject to Memorandum of Agreement dated April 23, 2015 between Declarant and Agribusiness Development Corporation, a public body corporate and politic and an instrumentality of the State of Hawaii, a memorandum of which may be recorded in the Bureau of Conveyances of the State of Hawaii, as well as easements for the Waiahole Ditch, deed or lease covenants for Waiahole Ditch, reservations in favor of Declarant and Declarant Affiliates pertaining to the Waiahole Ditch, and other rights to and in favor of the owners, operators and users of Waiahole Ditch. Owners and the Owners Association shall have the obligation to recognize and abide by the Waiahole Ditch Memorandum of Agreement and the terms of such easements, covenants, rights and reservations. Such terms may include the obligation not to interfere with the use of and flowage of water through Waiahole Ditch, obligations to maintain surface and above-ground areas through which the Waiahole Ditch runs, obligations to maintain surface improvements within such easement and other areas related to the Waiahole Ditch, limitations on the use of surface and aboveground areas over covered or underground portions of Waiahole Ditch, and reservations of rights of access to, and use, maintenance and improvement of, the Waiahole Ditch. The Owners Association shall have the obligation to maintain easements and land designated as Common Area or part of the Area of Common Responsibility which may contain or be in the vicinity of the Waiahole Ditch and related surface improvements.

14.16. Drainage Improvements

Drainage improvements are located within or in the vicinity of Koa Ridge and Additional Property. To control the flow of storm and surface water through and from the Community and in order to satisfy certain requirements for the development and use of Koa Ridge, it will be

necessary and beneficial to the Community to ensure that existing drainage facilities within and in the vicinity of the Community are well maintained. Also to control the flow of storm and surface water through and from the Community, certain additional drainage improvements, including one or more detention basins, may be constructed in connection with the development of Koa Ridge. Portions of certain Parcels, the Common Area and Area of Common Responsibility may be subject to easements for drainage and drainage related purposes, deed or lease covenants for drainage or drainage related purposes, reservations in favor of Declarant and Declarant Affiliates for drainage and drainage related purposes, and other drainage rights to and in favor of others. Owners, Occupants, and the Owners Association shall have the obligation to recognize and abide by the terms of all such easements, covenants, rights and reservations. The Owners Association shall have the obligation to maintain easements, land and improvements designated as Common Area or part of the Area of Common Responsibility for drainage and drainage related purposes.

14.17. Sustainable Development Principles and Practices

It is intended that development of Koa Ridge be consistent with sustainability principles as set forth in the Koa Ridge Sustainability Plan dated December 2009, prepared on behalf of Declarant, as amended from time to time with Declarant's approval during the Declarant Control Period and thereafter with the approval of the Board (the "**Sustainability Plan**") and with such other, similar requirements as Declarant may establish for Koa Ridge. Without limitation, the use restrictions, Rules, and the Design Guidelines for the Community may incorporate all or portions of the Sustainability Plan and/or impose requirements with respect to, for example, nighttime lighting, landscaping, irrigation, the use of sustainable building materials and practices, and other sustainability standards. Declarant, the Owners Association, the Board, and the Reviewer shall comply with the implementation of the Sustainability Plan, as contemplated by the Zoning Ordinance, and may therefore take into account such principles, practices, and concerns in setting standards and policies and in exercising discretion with respect to matters of review and approval.

Chapter 15

Development and Land Use and Zoning Conditions

15.1. State Land Use Conditions and Zoning Conditions

The development and use of lands within Koa Ridge are subject to the covenants, conditions and restrictions set forth in:

(a) Findings of Fact, Conclusions of Law, and Decision and Order dated June 21, 2012, issued by the Land Use Commission of the State of Hawaii in Docket A11-793, a Declaration of Conditions of which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46100932 (as now or hereafter amended, the “**State Land Use Conditions**”); and

(b) Zoning Ordinance 13-38 of the City and County of Honolulu, as reflected in related Unilateral Agreement and Declaration for Conditional Zoning dated November 6, 2013, executed by Declarant and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-50580557 (as now or hereafter amended, the “**Zoning Ordinance**”).

15.2. Acknowledgment and Acceptance of Conditions; General Cooperation and Facilitation

The State Land Use Conditions and the Zoning Ordinance constitute encumbrances on Koa Ridge and are applicable to the development and use of all Parcels and Area of Common Responsibility. In connection with the foregoing, the Owners Association, all Owners, and all other Persons having an interest in land within the Koa Ridge Community:

(a) each acknowledges and accepts the State Land Use Conditions and Zoning Ordinance, and agrees to observe and perform all covenants, conditions and restrictions of the State Land Use Conditions and Zoning Ordinance, to the extent applicable to its Parcel or Sub-Unit or its interest in land that is subject to this Declaration of Community Covenants, or applicable to its development and use of Koa Ridge;

(b) each shall facilitate and cooperate with Declarant’s satisfaction and fulfillment of, and compliance with, the State Land Use Conditions and Zoning Ordinance, and shall not oppose or impede reasonable measures or programs by Declarant to fulfill the covenants, conditions and restrictions thereof (including, without limitation, in respect of water and energy conservation measures and programs, implementation of the Sustainability Plan and implementation of inclusionary zoning policy reflected in Restricted Residential Projects and other affordable housing projects);

(c) each consents and agrees to Declarant’s right to implement, require and enforce reasonable measures and programs for the purpose of fulfilling purposes and/or goals related to the conditions contained in the State Land Use Conditions and Zoning Ordinance, and each acknowledges and agrees that such purposes and/or goals shall or may be reflected in the planning, design and construction of improvements within the Community, and in the Rules, Design Guidelines and other actions and decisions (including approvals/denials) of Declarant, the Owners Association, the Reviewer, the Board and Owners Association committees; and

(d) each shall enforce the provisions of this Chapter 15, and cooperate with Declarant's efforts to enforce the provisions of this Chapter 15 against its respective Members and Sub-Unit Owners, and tenants and other Occupants of its respective Parcel or Sub-Unit.

Without limiting any of the foregoing provisions, the Owners Association shall facilitate and cooperate with the Declarant in the development of Koa Ridge in accordance with the Master Plan, and in the satisfaction of conditions and requirements of the State Land Use Conditions and the Zoning Ordinance described in this Chapter 15.

15.3. Particular Obligations with Respect to State Land Use Conditions and Zoning Conditions

Without limiting the provisions of Section 15.2, the Owners Association, each Owner and Parcel Developer hereby acknowledges, covenants and agrees and follows:

(a) **Affordable Housing.** Each Owner acknowledges that affordable housing (including Restricted Residential Projects) will be part of the Koa Ridge Community, including without limitation in satisfaction of the requirements of the Zoning Ordinance and State Land Use Conditions, and agrees not to oppose or impede the development of Restricted Residential Projects or other affordable housing within Koa Ridge on the basis of any claimed or alleged social or economic impacts that such housing may have on its own Parcel or on the Community.

(b) **Adjacent Agricultural Lands.** Farming operations and practices on parcels of land in the State Land Use Agricultural District within or in the vicinity of Koa Ridge are protected under HRS Chapter 165, the Hawaii Right to Farm Act, and potential nuisances from noise, odors, dust, fumes, spray, smoke or vibration may result from such agricultural uses on lands within or in the vicinity of Koa Ridge. Each Owner and Parcel Developer shall so notify all prospective developers, purchasers, and Occupants of its respective Parcel or Sub-Unit. None of the Owners Association or any Owner or Parcel Developer shall take any action that would interfere with or restrain farming operations which are conducted in a manner consistent with generally accepted agricultural and management practices on lands in the State Land Use Agricultural District within or in the vicinity of Koa Ridge. For purposes of this Section, "farming operations" shall have the same meaning as provided in HRS Section 165-2.

(c) **Water Conservation Measures.** Requirements, policies, guidelines and best management practices for water conservation will be incorporated into the Rules, the Design Guidelines and Community design and landscaping. Such requirements, policies and guidelines may include measures such as use of endemic, indigenous and drought tolerant plants and turf. The Owners Association and each Owner and Parcel Developer shall observe such requirements, policies and guidelines in the design and landscaping for its respective Parcel or Sub-Unit or interest in land that is subject to this Declaration of Community Covenants.

(d) **Air Quality Management.** The Owners Association and each Owner and Parcel Developer shall cooperate and participate as requested by Declarant in air quality monitoring programs as and to the extent required by the Department of Health of the State of Hawaii.

(e) **Energy Conservation Measures.** Requirements, policies and guidelines for energy conservation, sustainable design, and environmental stewardship, such as use of solar

energy and solar heating, will be incorporated into the Rules, the Design Guidelines and Community design and landscaping. The Owners Association and each Owner and Parcel Developer shall observe such requirements, policies and guidelines in the design and construction of improvements on its respective Parcel or Sub-Unit or interest in land that is subject to this Declaration of Community Covenants.

(f) Best Management Practices. The Owners Association and each Owner and Parcel Developer shall implement all appropriate best management practices applicable to each proposed use of its respective Parcel or Sub-Unit or interest in land that is subject to this Declaration of Community Covenants, to minimize filtration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after development in accordance with guidelines of the Department of Health of the State of Hawaii and ordinances and rules of the City and County of Honolulu.

(g) Archeological and Historic Preservation. The Owners Association and each Owner and Parcel Developer shall observe and perform and satisfy all State Land Use Conditions and all terms and conditions of the Zoning Ordinance pertaining to any archaeological or historical sites, resources or features upon or abutting its respective Parcel or interest in land that is subject to this Declaration of Community Covenants. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division, Oahu Island Section, of the State of Hawaii Department of Land and Natural Resources (“**SHPD**”) shall be contacted immediately. Without any limitation to any other condition, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified to SHPD, are discovered during the course of construction, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

(h) Established Access Rights. The Owners Association and each Owner and Parcel Developer shall observe and perform and satisfy all State Land Use Conditions and all terms and conditions of the Zoning Ordinance pertaining to any established access rights of Native Hawaiians who have customarily and traditionally used Koa Ridge or portions of Koa Ridge to exercise subsistence, cultural and religious practices, or for access to other areas.

(i) Annual Reports. The Owners Association and each Owner and Parcel Developer shall cooperate with Declarant in the preparation and filing of periodic reports as may be required by State Land Use Conditions or under the Zoning Ordinance, and shall provide such information to Declarant as may be reasonably necessary to prepare such reports.

Chapter 16

Rights of Lenders

The following are for the benefit of holders, insurers, and guarantors of Mortgages in Koa Ridge. The provisions of this Chapter are subject to amendment as described in Chapter 20, and as from time to time amended shall apply to this Declaration of Community Covenants and all other Governing Documents, notwithstanding any other provisions contained therein.

16.1. Notices of Action

An institutional holder, insurer, or guarantor of a Mortgage which provides a written request to the Owners Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description and street address of the property to which its Mortgage relates, thereby becoming an “**Eligible Holder**”), will be entitled to timely written notice of:

(a) Any delinquency in the payment of assessments or charges owed to the Owners Association by the Owner of the Parcel or Sub-Unit subject to the Mortgage held such Eligible Holder, where such delinquency is in excess of Five Thousand Dollars (\$5,000.00) and has continued for a period of at least sixty (60) days; and

(b) Any proposed sanction in excess of Five Thousand Dollars (\$5,000.00) to be taken against the Parcel or Sub-Unit on which the Eligible Holder has a Mortgage. In addition to notice, an Eligible Holder shall be given an opportunity to cure any violation in the same manner as a Parcel Owner under Section 8.2.

16.2. Priority

Except for the enforcement of liens established in favor of the Owners Association in accordance with this Declaration of Community Covenants in respect of which a Notice of Lien has been recorded prior to the recording of a Mortgage as described in Section 12.7(a) above, no breach of any of the provisions of this Declaration of Community Covenants will defeat or impair the lien of any Mortgage made in good faith and for value on any portion of Koa Ridge. The terms and conditions of this Declaration of Community Covenants, however, shall be binding on and effective against any party who acquires title to a Parcel or Sub-Unit by foreclosure, deed in lieu of foreclosure, or otherwise, and those claiming under them. No provision of this Declaration of Community Covenants or the By-Laws gives or shall be construed as giving any Owner priority over any rights of the holder of any Mortgage on any Parcel or Sub-Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. Notice to Association

Upon request, each Parcel Owner shall be obligated to furnish to the Owners Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel or the Sub-Units within such Parcel.

**PART FIVE: DEVELOPMENT AND CHANGES TO KOA RIDGE; DECLARANT'S
RESERVED RIGHTS; AMENDMENTS AND TERMINATION OF THIS
DECLARATION**

**Chapter 17
Expansion and Contraction of the Community**

17.1. Expansion by Declarant

From time to time, Declarant may submit to the terms of this Declaration of Community Covenants all or any portion of the Additional Property (including any portions of the Initial Property or Additional Property made subject to this Declaration of Community Covenants but later withdrawn) by recording a Supplement describing the additional property to be submitted and designating such property as being so submitted. Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not Declarant.

A Supplement submitting additional property to this Declaration of Community Covenants may cover one or more Parcels, as designated in such Supplement. In the absence of a specific designation of Parcels in a Supplement, it shall be presumed that all such additional property is part of the same Parcel. Each Parcel shall assigned a Use Designation as described in Section 3.2, and the Supplement may specify one or more additional classes or subclasses of membership to which the Owners of such Parcel will belong and the rights, privileges and obligations of such additional class or subclass of Membership. A Supplement may divide a single Parcel into two or more Parcels, may combine two or more Parcels into one Parcel or may expand, contract or otherwise change the boundaries of a Parcel and may establish specific permitted residential, non-residential, community support, civic and other uses within Parcels, establish maximum development densities for Parcels, including the maximum number of dwelling units that may be developed on Residential Parcels, Mixed Use Parcels or Restricted Residential Parcels, or the maximum gross floor area for Non-Residential Uses on Mixed Use Parcels or Non-Residential Parcels, or the maximum gross floor area of Community Support Uses or Civic Uses for any Parcel. A Supplement may also designate any Common Area, Area of Common Responsibility, Association Maintenance Walls or Special Use Areas within the property covered by the Supplement, and it may identify the Special Benefited Areas to which the parcels covered by the Supplement will belong. A Supplement may also establish the commencement date for assessments and/or voting rights for such additional property, may modify the allocation of assessments and/or voting rights on particular Parcels, and may also contain such additional or modified covenants and conditions with respect to all or portions of the additional property as Declarant in its discretion deems appropriate.

Declarant's right to unilaterally expand Koa Ridge under this Section shall expire on December 31, 2065.

Nothing in this Declaration of Community Covenants shall require Declarant or any successor to submit the Additional Property to this Declaration of Community Covenants or to develop any of the Additional Property in any manner whatsoever.

Different parcels of property may be submitted to this Declaration of Community Covenants at different times. No assurances are given as to the boundaries of the parcels that may be submitted to this Declaration of Community Covenants, or as to the order in which different parcels of property may be submitted to this Declaration of Community Covenants.

So long as Declarant has the unilateral right to expand Koa Ridge under this Chapter, Declarant shall have the right to amend any Supplement recorded by it under this Chapter without the approval of the Owners Association or any other Owner, except that if a Person other than Declarant owns the property directly affected by such amendment and if Declarant has not otherwise reserved the right to amend the Supplement, then the Supplement must also be signed by such other owner evidencing its consent.

17.2. Expansion by the Owners Association

The Owners Association also may submit additional property to this Declaration of Community Covenants by recording a Supplement describing the additional property. Any Supplement which the Owners Association records must be approved by (a) Parcel Owners representing at least a majority of the Residential Votes cast in person or by proxy at a meeting duly called for such purpose, and (b) Parcel Owners representing at least a majority of the Non-Residential Votes cast in person or by proxy at a meeting duly called for such purpose and (c) the owner of the property to be submitted. The Owners Association's President and Secretary, the owner of the property, and Declarant, if Declarant's consent is required, shall sign the Supplement.

During the Development and Sale Period, Declarant's consent is required for the Owners Association to submit additional property to this Declaration of Community Covenants.

17.3. Additional or Modified Covenants and Easements

Any Supplement subjecting additional property to this Declaration of Community Covenants, whether by Declarant or the Owners Association, may impose additional or modified covenants, conditions, restrictions and easements on such additional property, including covenants obligating the Owners Association to maintain and insure all or portions of Areas of Common Responsibility, all or portions of the Common Area, or Special Use Areas, and authorizing the Owners Association to recover costs through Special Benefited Area Assessments or other assessments. Such provisions may also be included in a Supplement applicable to property previously submitted to this Declaration of Community Covenants. If someone other than Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent.

Any Supplement, whether subjecting additional property to or applicable to property previously submitted to this Declaration of Community Covenants, may add to, create exceptions to, or otherwise modify the terms of this Declaration of Community Covenants as it applies to such property, in order to reflect the different character and intended use of such property.

If there is any conflict between any Supplement and this Declaration of Community Covenants, the provisions of the Supplement shall control with respect to the property described

in such Supplement, although such documents shall be construed to be consistent with one another to the extent possible.

During the Development and Sale Period, Declarant's consent is required for any additional or modified terms to this Declaration of Community Covenants and for the creation of any exceptions to this Declaration of Community Covenants.

17.4. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration of Community Covenants shall be assigned voting rights in the Owners Association and assessment liability based upon an assignment of Equivalent Units, as described in Exhibit "D" or in such Supplement, which voting rights shall commence immediately upon such effective date unless otherwise provided in such Supplement.

17.5. Contraction of the Community

Declarant shall have the right to withdraw property from the Community (and in connection therewith amend this Declaration of Community Covenants), as set forth in Section 18.2. The Owners Association shall have the right to amend this Declaration of Community Covenants to withdraw property from the Community in accordance with the provisions of Section 20.2(c), subject to the written consent of the Declarant during the Development and Sale Period.

Chapter 18

Additional Reserved Rights

18.1. Development and Special Declarant Rights

In addition to the rights specifically reserved to Declarant under Chapter 17 with respect to expanding Koa Ridge and such other rights as are provided for in the Governing Documents, Declarant reserves for itself and any Declarant Affiliate:

(a) the right to complete or permit others to complete, or to not complete, any improvements indicated on Declarant's development plans or in the Master Plan, the right to modify the Master Plan as the Declarant in its discretion deems necessary or desirable, and the right to submit to or withdraw property from Koa Ridge in accordance with the provisions of this Declaration of Community Covenants, whether or not covered by the Master Plan;

(b) the right to create, permit the creation of, merge, or permit the merger of condominium regimes on Parcels, to amend any such condominium regimes, and to withdraw Sub-Units or other property from any such condominium regime;

(c) the right to create and designate, or permit others to create and designate, additional Parcels, Common Areas, and Area of Common Responsibility, including Special Use Areas (subject to the provisions of Section 9.3), and to designate and dedicate roadways and utilities, parks, school sites and civic facilities within any portion of Koa Ridge it or any Declarant Affiliate owns, or on property over which Declarant or a Declarant Affiliate has reserved such rights, or on property conveyed by Declarant or a Declarant Affiliate to a Person to whom Declarant has delegated or assigned such rights;

(d) the right to transfer, dedicate, convey or grant Common Areas or Area of Common Responsibility to the Owners Association, subject to such reserved rights as the Declarant deems necessary, desirable or appropriate, including reservations of the right to grant easements and other interests to governmental entities or authorities, utility companies and others, and the right to dedicate and convey such areas to the City and County of Honolulu, the State of Hawaii, or other governmental entities or authorities;

(e) the right to establish standards for maintenance and improvement for all or portions of certain Parcels or all or portions of the Area of Common Responsibility, including the right to require that certain Parcels or portions of Parcels or certain portions of the Area of Common Responsibility be maintained in condition sufficient to be dedicated to and accepted by governmental authorities or agencies;

(f) the right to create or provide for amenities, and services to be owned, maintained, and operated by the Owners Association for the benefit of all or particular Parcels and/or Sub-Units or classes of Parcels and/or Sub-Units, including the right to designate and change the boundaries of Special Benefited Areas as provided in Section 3.2 and Section 18.4 and the right to designate and change the boundaries of Special Use Areas as provided in Section 3.1 and Section 18.4;

(g) the right to create new Parcels, divide, combine or change the boundaries of Parcels, or to permit others to divide, combine or change the boundaries of Parcels, or to convert Parcels or portions of Parcels into Area of Common Responsibility (including Common Areas or Special Use Areas) or roadways;

(h) the right to amend the permitted use of any Parcel or the Use Designation of any Parcel in accordance with the provisions of Section 7.1(h) and Section 18.3;

(i) with respect to property that it or any Declarant Affiliate owns, the right to replat property, to convert Parcels into Common Area, and to convert any Common Area into Parcels;

(j) the right to withdraw from Koa Ridge any Parcel or any portion of a Parcel, subject to Section 18.2;

(k) the right to create, amend the designation of, change the boundaries of, add to or remove areas from, or eliminate any Residential Area of Common Responsibility, any Non-Residential Area of Common Responsibility, any General Area of Common Responsibility, any Special Use Area, or any Special Benefited Area, and in connection therewith to modify the allocation of Common Expenses among the Owners in accordance with the provisions of Section 18.4;

(l) the right to assign to the Owners Association rights and/or privileges that Declarant holds by deed restrictions or by private covenants;

(m) the right to grant easements or rights of entry for use of the sidewalks, paths, bikeways, and streets within Koa Ridge for users in the vicinity of Koa Ridge;

(n) all rights contained in this Declaration of Community Covenants or other Governing Documents with respect to the Village Green and other portions of the Area of Common Responsibility;

(o) the right to authorize the operation of, determine the location of, and establish conditions for the use and operation of, Village Green Kiosks and other Common Area Kiosks;

(p) the right to maintain sales offices, management offices, and advertising signs on the property described in Exhibit "A" and "B", as set forth in Section 13.5 and Section 18.8;

(q) the right of access over the Area of Common Responsibility for the purpose of making improvements within the Initial Property or Additional Property;

(r) the right to close streets and sidewalks, Common Areas and Area of Common Responsibility, the Village Green (during the Declarant Control Period) and parks and recreation facilities within Koa Ridge to allow their use for special events, and with respect to the Village Green, the right to permit the Board to close the Village Green for special events;

(s) the right to establish and authorize vacation rentals, transient accommodations and timeshare and other programs, clubs and arrangements as set forth in Section 7.1(d);

(t) the right to appoint and remove Directors of the Owners Association during the Declarant Control Period as provided in this Declaration of Community Covenants or the By-Laws;

(u) the right to adopt, amend, and approve amend Rules as provided in this Declaration of Community Covenants; and

(v) all other rights reserved by Declarant under Chapter 17, this Chapter 18 or under any other provision of this Declaration of Community Covenants.

The Owners Association and each Owner hereby consents and agrees that Declarant shall have such rights and authority as set forth in this Section and hereby delegates, grants and assigns to Declarant, as their true and lawful agent and attorney-in-fact, with full power of substitution, the right and authority to execute, deliver, and record such documents as may reasonably be necessary, in Declarant's discretion, to carry forth or otherwise accomplish any of such Declarant rights. The grant of such power, being coupled with an interest, is irrevocable for the term of Declarant's reserved rights, and shall not be affected by the disability of such party or parties. Further, the grant of such power shall be binding upon any assigns of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assignee, transferee, or successor-in-interest upon any transfer of any Parcel or Sub-Unit or any interest therein, whether by deed, mortgage, or other instrument of conveyance.

18.2. Withdrawal of Property

Declarant reserves the unilateral right until December 31, 2065, in its discretion, to amend this Declaration of Community Covenants to withdraw any portion of Koa Ridge from the coverage of this Declaration of Community Covenants. In the event of a withdrawal of property containing Parcels, assessments and votes pertaining to property remaining in Koa Ridge shall continue to be allocated based upon this Declaration of Community Covenants and the assignment of Equivalent Units as provided in Exhibit "D", or in a Supplement.

Any amendment to withdraw property shall not require the consent of any Person other than the Parcel Owner(s) of the property to be withdrawn, if not Declarant.

18.3. Amendments to Use Designations and Parcel Boundaries

In amplification of and without limiting the provisions of Section 7.1(h), Section 17.1, or Section 18.1, Declarant reserves the unilateral right during the Development and Sale Period, in its discretion, to amend this Declaration of Community Covenants or any Supplement or to execute and record additional Supplements to divide or change the boundaries of any Parcel, or to combine any two or more Parcels, or to amend the Use Designation of all or any portion of any Parcel, and in connection therewith to modify the permitted use of all or any portion of any such Parcel. Any such amendment or modification or division or combination by Declarant shall be set forth in a Supplement executed and recorded by Declarant, and shall not require the consent of any Person other than the Parcel Owner(s) of the affected property, if not Declarant.

18.4. Amendments to Area of Common Responsibility and Special Benefited Area Designations

Declarant reserves the unilateral right during the Development and Sale Period, in its discretion, to amend this Declaration of Community Covenants or any Supplement or to execute and record additional Supplements to create, amend the designation of, change the boundaries of, add to or remove areas from, or eliminate any Universal Residential Area of Common Responsibility, any Standard Residential Area of Common Responsibility, any Non-Residential Area of Common Responsibility, any General Area of Common Responsibility (including the Village Green), any Special Use Area, or any Special Benefited Area, and in connection therewith to modify the allocation of Common Expenses among the Owners. Any such amendment or modification by Declarant shall not require the consent of any Owner or other Person. Declarant also reserves the unilateral right during the Development and Sale Period, in its discretion, to amend this Declaration of Community Covenants or any Supplement or to execute and record additional Supplements to convert all or any portion of any Universal Residential Area of Common Responsibility to a Standard Residential Area of Common Responsibility or to convert all or any portion of any Standard Residential Area of Common Responsibility to a Universal Residential Area of Common Responsibility.

18.5. Approval of Board Action to Designate or Withdraw Area of Common Responsibility

The right of the Owners Association or any Parcel Owner to designate or withdraw any Area of Common Responsibility is subject to Declarant's approval during the Development and Sale Period and, thereafter, the Board's approval.

18.6. Right to Approve Changes in Community Standards

During the Declarant Control Period, no amendment to or modification of any Rules, the Sustainability Plan or any rules or regulations governing the use and maintenance of the Area of Common Responsibility shall be effective without prior notice to and the written approval of Declarant. So long as Declarant retains review authority under Section 5.2(a), no amendment to or modification of the Design Guidelines shall be effective without prior notice to and the written approval of Declarant.

18.7. Additional or Conflicting Covenants and Restrictions

Declarant reserves the right to record additional covenants, restrictions and other encumbrances against property which it owns within the Community (or which it records with the consent of the Owner of the subject property or pursuant to a right reserved by the Declarant) or against property to be made part of the Community. Except as expressly allowed by the Governing Documents, during the Development and Sale Period, no one other than Declarant may record any additional covenants or restrictions negating, modifying, creating exceptions to or in conflict with the provisions of the Governing Documents or affecting the Owners Association, the Common Areas, or the Area of Common Responsibility or generally affecting the Community as a whole without Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.8. Construction and Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, Declarant, Declarant Affiliates, Parcel Developers, the Owners Association, and their designees or assigns may construct, use, conduct, and maintain upon portions of Parcels, the Common Area, and other property which Declarant or a Declarant Affiliate or a Parcel Developer or the Owners Association owns or reserves rights in and to, such facilities and activities, as in their respective opinion, may reasonably be required, convenient, or incidental to the development and construction of improvements on, and marketing, leasing, and sale of, Parcels or any portions thereof. Such permitted facilities and activities may include business offices, signs, flags (whether hung from flag poles or attached to a structure), banners, balloons, sales offices, construction offices/trailers, holding or sponsoring special events and functions, and exterior lighting features or displays.

18.9. Exclusive Rights to Use Name of Development; Ownership of Marketing Materials

No Person shall use the names “Koa Ridge”, “Castle & Cooke”, or any other name designated by Declarant in an amendment to this Declaration of Community Covenants, any derivative of any such name, any associated graphic elements, or any logo or depiction associated with any such name, in any printed or promotional material without Declarant’s prior written consent. However, Owners may use the name “Koa Ridge” in printed or promotional materials where such term is used solely in reference to that particular property being located within Koa Ridge or in reference to the Owners Association, and the Owners Association shall be entitled to use the words “Koa Ridge” in its name.

Declarant and Declarant Affiliates shall have the same rights and interests as described above in and to the names of individual projects developed by Declarant or Declarant Affiliates within Koa Ridge, together with associated graphic elements or logos, provided that Owners within a project may use such project names in printed or promotional materials where such term is used solely in reference to that particular property being located within that project or in reference to the Parcel Association, and the related Parcel Association shall be entitled to use the project name in its name.

Marketing materials created by Declarant or any Declarant Affiliate for use in connection with the marketing and sale of Koa Ridge are the property of Declarant or such Declarant Affiliate and neither the Owners Association nor any Owner may use or permit the use of such materials without Declarant’s or such Declarant Affiliate’s prior written consent.

18.10. Telecommunications Systems

As provided in Section 13.2(b), Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns (which may include the Owners Association), a perpetual right and easement over all property in Koa Ridge to provide or otherwise provide for Telecommunications Systems. Such right shall include, without limitation, Declarant’s right to select and contract with companies to provide telecommunications, cable television, and other community systems services in the region. Declarant, Declarant Affiliates, and their respective

successors and assigns, shall also have the right, without obligation, to erect or permit the erection of aerial antennae, satellite dishes, and other apparatus and equipment for a master antenna, cable, or other communication system for Telecommunications Systems within Koa Ridge and the Additional Property and may charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time may be defined by the laws, rules, and regulations of the relevant government authority, if applicable.

In addition, Declarant, Declarant Affiliates, and their respective successors and assigns, may enter into leases, licenses or other agreements with third parties permitting the installation within Koa Ridge, including on the roofs of structures on Parcels, and operation of Telecommunications Systems-related improvements (e.g., cellular telephone towers), without regard to whether such improvements are designed to serve the Community.

Declarant may enter into and assign to the Owners Association, or cause the Owners Association to enter into, service agreements providing access to any Telecommunications Systems for all Parcels as a General Common Expense, to the Residential Parcels, Restricted Residential Parcels, Mixed Use Parcels, and/or Residential Sub-Units as a Universal Residential Common Expense or Standard Residential Common Expense, to the Non-Residential Parcels, Mixed Use Parcels, and/or Non-Residential Sub-Units as a Non-Residential Common Expense or for particular Parcels and/or Sub-Units as a Special Benefited Area Expense. Alternatively, if particular services or benefits are provided to particular Parcel Owners or Sub-Unit Owners at their request, the benefited Owner(s) may be required to pay the service provider directly for such services, or the Owners Association may assess the charges as a Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Notwithstanding the above, there is no guarantee or representation that any particular Telecommunications System will be made available. There is no guarantee or representation that any Telecommunications System installed or operated by Declarant, Declarant Affiliates or their successors or assigns will not interfere with, disturb or intercept any WiFi system or other signals, networks or systems operated by any Owner, Parcel Association or any other Person.

18.11. Access for Exercise of Reserved Rights

Declarant, Declarant Affiliates, and their respective employees, agents, and designees shall have a right of access and use and an easement over and upon all Parcels and all of the Area of Common Responsibility, including roadways within Koa Ridge, for the purpose of exercising any rights reserved to Declarant and Declarant Affiliates pursuant to this Declaration of Community Covenants, including the rights set forth in this Chapter 18.

18.12. Right to Use Area of Common Responsibility for Special Events

Declarant may use the Area of Common Responsibility, including the Village Green, during the Declarant Control Period and thereafter with the approval of the Board, to sponsor special events for charitable, philanthropic, political, or marketing purposes (and may, for such purposes, close streets and sidewalks within Koa Ridge), subject to the following conditions:

- (a) the availability of the facilities at the time requested;

(b) Declarant shall be responsible for payment of all costs and expenses incurred and shall indemnify the Owners Association against any loss or damage resulting from the special event; and

(c) the facilities and personal property used in conjunction with the special event shall be returned to the Owners Association in the same condition as existed prior to the special event.

Declarant shall have the right to assign its rights under this Section to charitable or nonprofit organizations or foundations selected by Declarant. Declarant's right to use the Area of Common Responsibility for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration of Community Covenants.

18.13. Right to Transfer or Assign Rights under Deed Restrictions or Private Covenants

Declarant shall have the right from time to time to assign to the Owners Association, and the Owners Association shall accept and thereafter enforce, all or any portion of any rights or privileges which Declarant may hold or acquire by deed restrictions or by private covenants pertaining to the use or development of property within Koa Ridge, the Additional Property, or property in the vicinity of Koa Ridge. Declarant shall also have the right to designate any such assignment as a Supplement, but no such assignment shall be effective unless it is in an instrument signed by Declarant.

18.14. Right to Transfer or Assign Declarant's Rights

Any or all of Declarant's special rights and obligations set forth in this Declaration of Community Covenants or the Governing Documents may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration of Community Covenants or the Governing Documents. No such transfer or assignment shall be effective unless it is in an instrument signed by Declarant and the transferee or assignee. Without limitation, Declarant may permit other Persons to exercise, on a one-time, periodic or limited basis, any right reserved to Declarant in this Declaration of Community Covenants or any Governing Document where Declarant does not intend to transfer such right in its entirety.

18.15. Exercise and Termination of Rights

Any and all of the rights reserved to Declarant and Declarant Affiliates under this Declaration of Community Covenants may be exercised with respect to different portions of Koa Ridge at different times. If a right is exercised with respect to any portion of Koa Ridge, it need not be exercised with respect to all or any other portion of Koa Ridge. No assurances are made as to the boundaries of any property as to which Declarant or Declarant Affiliates may exercise such rights, or as to the order in which different portions of Koa Ridge may be subjected to the exercise of such rights.

Except as otherwise specified, the rights reserved to Declarant and Declarant Affiliates shall terminate on the earlier of: (a) termination of the Development and Sale Period; or (b) Declarant's recording of a written statement terminating such right or rights.

Chapter 19

Changes in the Common Area

19.1. Condemnation

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Owners Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.3, each Parcel Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Owners Association to be used as hereinafter described.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Owners Association shall restore or replace such improvements on available remaining portions of the Common Area, unless within sixty (60) days after such taking a decision not to restore or replace is approved by: (i) with respect to an improvement within the Residential Area of Common Responsibility, consent of the Residential Committee and a vote of Parcel Owners entitled to cast at least a majority of the total Residential Votes; provided, however, that the Restricted Residential Subclass of Members shall be excluded from any vote pertaining solely to the Standard Residential Area of Common Responsibility; (ii) with respect to any improvement within the Non-Residential Area of Common Responsibility, consent of the Non-Residential Committee and a vote of Parcel Owners entitled to cast at least a majority of the total Non-Residential Votes; (iii) with respect to an improvement within the General Area of Common Responsibility, consent of the Board and a vote of Parcel Owners entitled to cast at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes; or (iv) with respect to an improvement within a Special Use Area, consent of the Special Benefited Area Committee to which such Special Use Area is assigned and a vote of Owners (including Sub-Unit Owners acting through their respective Parcel Associations) entitled to cast at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes attributed to Parcels and Sub-Units of the Special Benefited Area to which the Special Use Area is assigned. In addition to the above voting requirements, during the Development and Sale Period, Declarant's consent is required for any decision not to restore or replace any improvements within any Area of Common Responsibility or Common Area.

Any such restoration, repair or construction shall be in accordance with plans approved by the Board or applicable committee. The provisions of Section 9.6 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.3.

19.2. Partition

Except as otherwise specifically permitted in this Declaration of Community Covenants, the Common Area shall remain undivided, and no Person shall bring any action to partition any

portion of such Common Area without the written consent of Declarant during the Development and Sale Period and the consent of all Parcel Owners. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration of Community Covenants, with such approval as may be required under Section 19.3.

19.3. Transfer or Dedication of Common Area

During the Development and Sale Period: (i) Declarant may unilaterally dedicate and convey roadways, utilities, parks, school sites and civic facilities within Koa Ridge and other portions of the Common Area or Area of Common Responsibility that it or a Declarant Affiliate owns to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity; and (ii) the Owners Association, upon Declarant's request and without a vote of the membership, shall dedicate and convey roadways, utilities, parks, school sites and civic facilities and other Common Areas to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity, as applicable.

The Owners Association also: (i) may dedicate and convey portions of the Common Area to the City and County of Honolulu or to any other local, state, or federal governmental or quasi-governmental entity; (ii) may subject the Common Area to a security interest; or (iii) may transfer or convey Common Area, in each case subject to the following:

(a) with respect to Common Area within the General Area of Common Responsibility, upon the written consent of the Board and the vote of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association and, during the Development and Sale Period, the written consent of Declarant; or

(b) with respect to Common Area within the Residential Area of Common Responsibility, upon the written consent of the Residential Committee and the vote of Parcel Owners representing at least a majority of the total Residential Votes (provided, however, that the Restricted Residential Subclass of Members shall be excluded from any vote pertaining solely to the Standard Residential Area of Common Responsibility), and, during the Development and Sale Period, the written consent of Declarant; or

(c) with respect to Common Area within the Non-Residential Area of Common Responsibility, upon the written consent of the Non-Residential Committee and the vote of Parcel Owners representing at least a majority of the total Non-Residential Votes and, during the Development and Sale Period, the written consent of Declarant; or

(d) with respect to Common Area within any Special Use Area, upon the written consent of the Special Benefited Area Committee to which such Special Use Area is assigned and the vote of Owners (including Sub-Unit Owners acting through their respective Parcel Associations) representing at least a majority of the Residential Votes and at least a majority of the Non-Residential Votes assigned to the Parcels and Sub-Units of the Special Benefited Area to which such Special Use Area is assigned, and, during the Development and Sale Period, the written consent of Declarant.

Each Owner acknowledges that governmental entities responsible for maintaining property within Koa Ridge may not be required to comply with the Koa Ridge Standard, and, as such, such properties may not be maintained to the same level as properties the Owners Association maintains.

The Owners Association's proceeds from the sale or transfer of any Common Area within the General Area of Common Responsibility shall be an asset of the Owners Association, and shall be used as the Board determines, including among other options as a reserve against future General Common Expenses or as a distribution among the Members in proportion to their relative liability for General Common Expenses. The Owners Association's proceeds from the sale or transfer of any Common Area within the Universal Residential Area of Common Responsibility or Standard Residential Area of Common Responsibility shall be an asset of the Owners Association, and shall be used as the Residential Committee determines, including among other options as a reserve against future Universal Residential Common Expenses or Standard Residential Common Expenses, respectively, or as a distribution among the Parcel Owners in proportion to their relative liability for such Residential Common Expenses. The Owners Association's proceeds from the sale or transfer of any Common Area within the Non-Residential Area of Common Responsibility shall be an asset of the Owners Association, and shall be used as the Non-Residential Committee determines, including among other options as a reserve against future Non-Residential Common Expenses or as a distribution among the Parcel Owners in proportion to their relative liability for Non-Residential Common Expenses. The Owners Association's proceeds from the sale or transfer of any Common Area within a Special Use Area shall be an asset of the Owners Association, and shall be used as determined by the Special Benefited Area Committee to which such Special Use Area is assigned, including among other options as a reserve against future Special Benefited Area Expenses or as a distribution among the Owners of Parcels and Sub-Units of the Special Benefited Area to which such Special Use Area is assigned in proportion to their relative liability for Special Benefited Area Expenses.

Chapter 20

Termination and Amendment of Declaration of Community Covenants

20.1. Term and Termination

This Declaration of Community Covenants is intended to be of perpetual duration, unless Parcel Owners representing at least eighty percent (80%) of the total votes in the Owners Association (including Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes) and Declarant (during the Development and Sale Period) direct the Board to execute and record a document stating that this Declaration of Community Covenants is terminated. In such case, this Declaration of Community Covenants shall terminate on the date specified in the termination document, and the assets of the Owners Association shall be transferred as Declarant directs, or in the absence of direction from the Declarant, to a nonprofit entity, the purpose of which is similar to the purposes of the Owners Association.

Notwithstanding the above, if any interest created by this Declaration of Community Covenants would be unlawful, void, or voidable by reason of the rule against perpetuities or any other rule restricting the period of time that covenants can affect title to property, such interest shall expire ninety (90) years from the date of recording of this Declaration of Community Covenants.

This Section shall not permit termination of any easement created in this Declaration of Community Covenants for the benefit of Declarant without the consent of Declarant. This Section shall not permit termination of any easement created by or pursuant to Section 13.4 of this Declaration of Community Covenants without the consent of the utility or service provider holding such easement. Other easements created in this Declaration of Community Covenants shall continue in effect following termination of this Declaration of Community Covenants unless the recorded document memorializing the termination of this Declaration of Community Covenants otherwise specifically provides that the easement is terminated.

20.2. Amendment

(a) By Declarant. Declarant may unilaterally and in its discretion amend this Declaration of Community Covenants for any purpose during the Declarant Control Period, subject to any limitations imposed by Hawaii law, including for the purposes described in Section 20.2(b) below. Declarant may also unilaterally amend this Declaration of Community Covenants to withdraw property from the Community as set forth in Section 18.2.

(b) By Declarant or the Board. Following the Declarant Control Period, Declarant, in its discretion and acting unilaterally, or the Board, without a vote of the Members, may amend the Declaration of Community Covenants or any Supplement to:

- (i) bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination;
- (ii) enable any reputable title insurance company to issue title insurance coverage on the Parcels or Sub-Units;

(iii) satisfy the requirements of any local, state, or federal governmental agency, including, without limitation to satisfy the requirements of the Real Estate Commission of the State of Hawaii in connection with the offering of any Parcel or Sub-Unit for sale;

(iv) satisfy the general requirements of institutional lenders providing funds on the security of Parcels or Sub-Units that are being purchased, developed or offered for sale or lease or to satisfy the general requirements of purchasers, insurers or guarantors of such loans, including, by way of example the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Department of Veterans Affairs; or

(v) clarify or correct technical, typographical, or scrivener's errors.

However, no amendment under this paragraph that would adversely affect the title to any Parcel or Sub-Unit shall be binding upon such Parcel or Sub-Unit without the written consent of the Parcel Owner or Sub-Unit Owner.

(c) **By Owners.** Except as otherwise specifically provided above and elsewhere in this Declaration of Community Covenants, this Declaration of Community Covenants may be amended only by the affirmative vote or written consent, or any combination thereof, of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association, and also during the Development and Sale Period the vote or written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) **Validity and Effective Date.** During the Development and Sale Period, Declarant's written consent shall be required for any amendment to this Declaration of Community Covenants. In addition, during the Development and Sale Period and thereafter, no amendment may remove, terminate, revoke, or modify any right or privilege of Declarant or any Declarant Affiliate, or the benefit of any reserved right, without the written consent of Declarant (or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or it shall be presumed that such amendment was validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration of Community Covenants.

(e) **Exhibits.** Exhibits “A”, “A-1”, “B”, “B-1” and “D” are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit “C” is incorporated by this reference and may be amended under Chapter 7 or pursuant to this Section.

PART SIX: DISPUTES AND LEGAL PROCEEDINGS

Chapter 21

Dispute Resolution and Limitation on Litigation

21.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) **Bound parties.** Declarant, the Declarant Affiliates, the Owners Association and its officers, Directors, and committee members, all Owners, all Persons subject to this Declaration of Community Covenants, and any person not otherwise subject to this Declaration of Community Covenants who agrees to submit to this Chapter (collectively, “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Koa Ridge without the emotional and financial costs of litigation.

Accordingly, a Bound Party may not file suit in any court with respect to a Claim described in Section 21.2(b), unless and until it has first submitted such claim to the alternative dispute resolution procedures set forth in Section 21.2 and made a good faith effort to resolve such claim.

(b) **Claims.** As used in this Chapter, the term “**Claim**” shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents; or
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents.

Notwithstanding the above, the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 21.2:

- (i) any suit by the Owners Association to collect assessments or other amounts due from any Owner or any judicial or non-judicial proceeding to foreclose upon any Owners Association lien;
- (ii) any suit by the Owners Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Owners Association’s ability to enforce the provisions of Chapters 5, 6, 7 and 8 of this Declaration of Community Covenants;
- (iii) the imposition of sanctions and exercise of remedies by the Board, the Owners Association or the Declarant pursuant to Section 8.2;
- (iv) any suit by the Owners Association, Declarant, or a Declarant Affiliate for damages or other remedy arising or alleged to have arisen as a result of the acts, omissions, negligence or misconduct of any Owner or Occupant;

(v) any suit that does not include Declarant, a Declarant Affiliate, or the Owners Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(vi) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 21.2; and

(vii) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 21.2(a), unless the party or parties against whom the Claim is made agree to toll or extend the Claim's statute of limitations to comply with this Chapter.

21.2. Dispute Resolution Procedures

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make reasonable efforts to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation (1) with Dispute Prevention Resolution Inc., or if it no longer exists, (2) with an entity designated by the Owners Association (if the Owners Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Honolulu, Hawaii. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator but not exceeding ninety (90) days, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties jointly and severally) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

21.3. Initiation of Litigation by Owners Association

The Owners Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Parcel Owners representing at least a majority of the total Residential Votes and at least a majority of the total Non-Residential Votes in the Owners Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period with Declarant's approval;
- (b) initiated to enforce the provisions of this Declaration of Community Covenants, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies;
- (e) initiated against any Owner or Occupant for damages or other remedy pertaining to any acts, omissions, negligence or misconduct or alleged actions, negligence or misconduct of such Owner or Occupant; or
- (f) to defend claims filed against the Owners Association or to assert crossclaims or counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by Declarant, during the Development and Sale Period, and thereafter by Parcel Owners representing the same percentage of votes necessary to institute proceedings.

THIS DECLARATION OF COMMUNITY COVENANTS FOR KOA RIDGE is made and executed by the undersigned Declarant this 8th day of June, 2020.

DECLARANT:

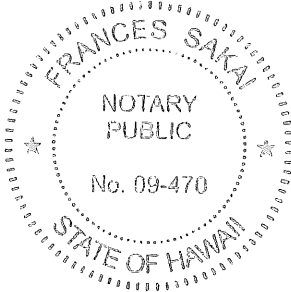
**CASTLE & COOKE HOMES HAWAII,
INC.,**
a Hawaii corporation

By 
Name: GARRET MATSUNAMI
Its: V.P. - Residential Operations

By 
Name: LAURALEI TANAKA
Its: V.P., Controller & Asst. Treasurer

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 8th day of June, 2020, before me personally appeared GARRET MATSUNAMI, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature: Frances Sakai

Print Name: FRANCES SAKAI
Notary Public, State of Hawaii

My commission expires: September 18, 2020

(Official Stamp or Seal)

NOTARY CERTIFICATE STATEMENT

Document Identification or Description: Declaration of Community Covenants for Koa Ridge

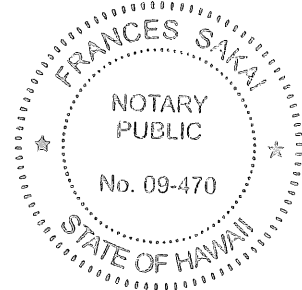
☒ Doc. Date: 6/8/2020 ☐ Undated at time of notarization.

No. of Pages: 157

Jurisdiction: First Circuit (in which notarial act is performed)

Frances Sakai 6/8/2020
Signature of Notary Date of Notarization &
Certification Statement

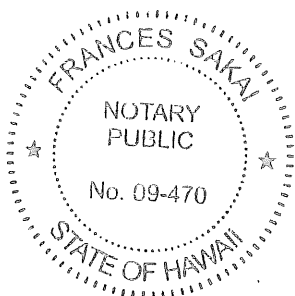
FRANCES SAKAI
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 8th day of June, 2020, before me personally appeared LAURALEI TANAKA, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature: Frances Sakai

Print Name: FRANCES SAKAI
Notary Public, State of Hawaii

My commission expires: September 18, 2020

(Official Stamp or Seal)

NOTARY CERTIFICATE STATEMENT

Document Identification or Description: Declaration of Community Covenants for Koa Ridge

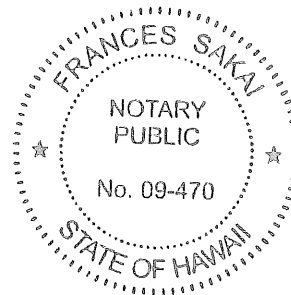
☒ Doc. Date: 6/8/2020 or ☐ Undated at time of notarization.

No. of Pages: 157

Jurisdiction: First Circuit (in which notarial act is performed)

Frances Sakai 6/8/2020
Signature of Notary Date of Notarization &
Certification Statement

FRANCES SAKAI
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT “A”

Description of Initial Property

Lot 2 of the Koa Ridge Phase A1a Subdivision (also known as Subdivision of Lot D-1 as shown on DPP File No. 2018/Sub-69), as shown on survey map dated March 3, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-165, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-73950483.

Lot 4 of the Koa Ridge Phase A1a Subdivision (also known as Subdivision of Lot D-1 as shown on DPP File No. 2018/Sub-69), as shown on survey map dated March 3, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-165, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-73950483.

EXHIBIT "A-1"

Supplemental Provisions as to Initial Property

Supplemental Declaration

Castle & Cooke Homes, Hawaii, Inc., as Declarant under the Declaration of Community Covenants to which this Exhibit is attached (the "Declaration") and also as the owner of the Initial Property, for the purposes set forth in the Declaration, hereby submits the Initial Property to the Declaration, hereby subjects all of the Initial Property to the obligations of the Koa Ridge Community under the Declaration, and hereby declares that, subject to the provisions of this Exhibit, all of the Initial Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to all of the easements, restrictions, covenants, conditions and equitable servitudes set forth in the Declaration which are applicable to Koa Ridge, including, without limitation, the functions, powers and jurisdiction of the Owners Association, as defined in the Declaration. This Exhibit shall be considered a Supplement, as defined in the Declaration, effective as of the date of execution and recordation of the Declaration.

Additional Declarations

Declarant confirms that except as expressly provided herein, the provisions of the Declaration shall apply to the Initial Property, and Declarant hereby further certifies and declares that:

- A. This Exhibit is in accordance with the Declaration, the terms and provisions of which are incorporated in this Exhibit by this reference;
- B. Except as otherwise specifically provided in this Exhibit, all definitions set forth in the Declaration or in an exhibit to the Declaration shall apply to this Exhibit;
- C. If there is any conflict between this Exhibit and the Declaration, or between this Exhibit and any other Governing Document, the provisions of this Exhibit shall control with respect to the Initial Property, although this Exhibit and the Declaration and other Governing Documents shall be construed to be consistent with one another to the extent possible;
- D. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth in the Declaration and in this Exhibit shall (1) run with the Initial Property; (2) be binding upon and inure to the benefit of all Persons having any right, title or interest in the Initial Property, or any part thereof, their heirs, personal representatives, successors, successive owners and assigns; (3) inure to the benefit of every portion of the Koa Ridge Community and any interest therein; (4) inure to the benefit of and be binding upon Declarant and its successors and assigns and each Owner and his, her or its respective successors-in-interest; and (5) may be enforced by Declarant, the Owners Association, and any Owner or Parcel Association and other benefited parties, if any, as and to the extent provided under the provisions of this Exhibit, the Declaration or any other Governing Document; and

E. If the Initial Property or any portion thereof is subdivided into, or is made subject to a condominium property regime which consists of, two or more Sub-Units, each Sub-Unit and the common area and common elements within or appurtenant to the Initial Property or appurtenant to any such Sub-Unit shall be subject to the Declaration and the Governing Documents.

Initial Property, Parcels, Use Designations and Use Restrictions

Unless and until modified in accordance with the Declaration or this Exhibit, and except for the Area of Common Responsibility designated in this Exhibit or in any Supplement, Lot 2 (“Lot 2”) and Lot 4 (“Lot 4”) of the Koa Ridge Phase A1a Subdivision (also known as Subdivision of Lot D-1 as shown on DPP File No. 2018/Sub-69), as shown on survey map dated March 3, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-165, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-73950483 (collectively referred to herein and in the Declaration as the “Initial Property”), shall each constitute a single Parcel under the Declaration, known respectively as the “Nanea at Koa Ridge - Phase I Parcel” and the “Nanea at Koa Ridge - Phase II Parcel”.

Unless and until modified in accordance with the Declaration or this Supplemental Declaration, and except for Area of Common Responsibility designated in this Exhibit or any other Supplement, the Nanea at Koa Ridge - Phase I Parcel and the Nanea at Koa Ridge - Phase II Parcel are each hereby designated a Residential Parcel under the Declaration, and the respective Parcel Owner of the Nanea at Koa Ridge - Phase I Parcel and the Nanea at Koa Ridge - Phase II Parcel shall each be considered a member of the Residential Class and General Residential Subclass of Members of the Owners Association.

The Nanea at Koa Ridge - Phase I Parcel shall be developed and used for residential purposes, and shall contain no more than 15 free-standing single-family dwellings.

The Nanea at Koa Ridge - Phase II Parcel shall be developed and used for residential purposes, and shall contain no more than 22 free-standing single-family dwellings.

Applicability of Governing Documents to Initial Property

The Nanea at Koa Ridge - Phase I Parcel and the Nanea at Koa Ridge - Phase II Parcel are each intended to be made subject to a condominium property regime, and upon any such submission and the creation of an association of unit owners (“AOUO”) for such condominium property regime, the applicable AOOU shall (1) be considered a Parcel Association with respect to the Parcel; (2) be deemed to be the Parcel Owner for such Parcel; (3) as Parcel Owner, act on behalf of the Sub-Unit Owners within the Parcel as provided in the Declaration; (4) be the member of the Owners Association with respect to the Parcel and exercise all rights and be subject to all obligations and liabilities of an Owner and Member of the Owners Association with respect to the Parcel; and (5) be authorized to receive all notices with respect to the Parcel and on behalf of the Sub-Unit Owners within the Parcel.

Assessments and Voting Rights

Subject to Section 12.9 of the Declaration, assessments and voting rights for the Nanea at Koa Ridge - Phase I Parcel and the Nanea at Koa Ridge - Phase II Parcel (and as applicable each Sub-Unit within either such Parcel) shall commence on the date that such Parcel or any portion thereof is developed for the purposes described in this Exhibit, and the Parcel (or such Sub-Unit) is either (1) conveyed or leased to a Person other than Declarant or a Declarant Affiliate, or (2) occupied or used for the purposes described in this Exhibit.

Special Reservations, Conditions and Restrictions

As part of the development of the Koa Ridge Community, Declarant shall have the right to establish and create certain planting strips within the land between any street boundary of the Nanea at Koa Ridge - Phase I Parcel and/or the Nanea at Koa Ridge - Phase II Parcel and the established curb or street line (the "Road Right of Way") abutting such boundary. As and to the extent that Declarant establishes and creates any such planting strip within the Road Right of Way abutting any boundary of the Nanea at Koa Ridge - Phase I Parcel and/or the Nanea at Koa Ridge - Phase II Parcel, but excluding any such planting strip that is from time to time part of the Area of Common Responsibility, the abutting Parcel Owner and its Sub-Unit Owners shall maintain the planting strip and all improvements and landscaping therein (other than trees that have been placed within the planting strip in accordance with the requirements of the City and County of Honolulu or other governmental entity or agency (the "Street Trees") except that the Parcel Owner (or its Sub-Unit Owners) shall water such Street Trees) in a neat, clean, and healthy condition, consistent with the Koa Ridge Standard, but subject to any rights reserved by Declarant, and any rights or obligations of the owner of the planting strip, and in accordance, also, with the following standards (the "Planting Strip Standards"): (a) any and all grass, plantings and other landscaping within the planting strip (other than Street Trees) shall conform to and shall be maintained to the standards necessary to meet the City's requirements for the dedication of roadways to the City; (b) no irrigation system shall be placed within the planting strip; and (c) no portion of the planting strip shall be paved, concreted or filled with gravel or other similar materials. Subject to any rights reserved by Declarant, and any rights or obligations of the owner of the planting strip, to the extent that any such planting strip has not been landscaped, the applicable abutting Parcel Owner (or its Sub-Unit Owners) shall install appropriate landscaping consistent with the Koa Ridge Standard and the Planting Strip Standards, with the approval of the Reviewer in accordance with the provisions of Chapter 5 of the Declaration. Subject to any rights reserved by Declarant, and any rights or obligations of the owner of the planting strip, the abutting Parcel Owner (or its Sub-Unit Owners) may modify any existing landscaping within any such planting strip in accordance with the Koa Ridge Standard and the Planting Strip Standards, and with the approval of the Reviewer in accordance with the provisions of Chapter 5 of the Declaration. Except as otherwise provided in this Exhibit, any new improvement other than landscaping or modification to any such existing improvement within the planting strip shall require the prior written approval of Declarant, which Declarant may give or withhold in its sole discretion and also the approval of the Reviewer in accordance with the provisions of the Chapter 5 of the Declaration.

Area of Common Responsibility

The following areas and improvements within or abutting the Initial Property shall constitute part of the Area of Common Responsibility, intended to be used and maintained by the Owners Association for the following purposes, effective as of the date that the Owners Association is granted a fee simple, leasehold, easement, license, right of entry, right of use, or other interest therein or thereto, and subject to the terms and conditions set forth in the deed, lease, easement, license, right of entry, right of use, or other conveyance document or instrument in favor of the Owners Association:

1. Easement FL-1 of the Koa Ridge Phase A1a Subdivision (also known as Subdivision of Lot D-1 as shown on DPP File No. 2018/Sub-69), as shown on survey map dated March 3, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-165, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-73950483 (“Nanea at Koa Ridge - Phase II Private Park”), to be used and maintained as a private park, as part of the General Area of Common Responsibility.

Notwithstanding anything to the contrary contained in the Declaration or any other Governing Document, and also notwithstanding the designation of the above described areas and improvements (collectively, the “Nanea at Koa Ridge - Phase II General Area of Common Responsibility”) as part of the General Area of Common Responsibility, Declarant hereby reserves and shall have the right at any time during the Development and Sale Period, to (a) dedicate, grant or convey the Road Right of Way to the City and County of Honolulu, the State of Hawaii or any governmental agency, or any other Person, and (b) grant to the City and County of Honolulu, the State of Hawaii, any public or private utility, any governmental agency, or any other Person one or more easements, licenses, rights of entries or other rights of use for all or any portion of the Nanea at Koa Ridge - Phase II General Area of Common Responsibility, for such purposes as Declarant shall in its discretion from time to time deem necessary or desirable, including without limitation a perpetual easement in favor of the City and County of Honolulu for flowage of storm and other surface waters over all or any portion of the Nanea at Koa Ridge - Phase II Private Park, and to execute and record in the Bureau of Conveyances of the State of Hawaii (the “Bureau”) and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the “Land Court”), as appropriate, one or more instruments so dedicating, conveying or granting the Road Right of Way or so granting any such easement, license, right of entry or other right of use, all without affecting the designation of the Nanea at Koa Ridge - Phase II General Area of Common Responsibility as part of the General Area of Common Responsibility or the obligations of the Owners Association or any Owner with respect thereto. Each such instrument shall effectively amend the provisions of this Exhibit without the consent or joinder of any Owner, but each Owner of a Parcel or Sub-Unit shall, if requested by Declarant, join in the execution and recordation of such instrument.

Notwithstanding anything to the contrary contained in the Declaration or any Governing Documents, and without limiting Declarant’s other rights under the Declaration, Declarant hereby reserves and shall have the right to execute and record in the Bureau or Land Court, as

appropriate, one or more instruments designating any additional areas and improvements within or abutting the Nanea at Koa Ridge - Phase I Parcel or the Nanea at Koa Ridge - Phase II Parcel as part of the Area of Common Responsibility, Special Use Areas, and/or Association Maintenance Walls. If and when any such area or improvement is designated to be part of the Area of Common Responsibility, a Special Use Area, or an Association Maintenance Wall, and subject to adjustment and modification as provided in the Declaration, such area or improvement shall be subject to all terms and conditions of the Declaration and Governing Documents regarding the use, enjoyment, maintenance and control of the Area of Common Responsibility, Special Use Areas, or Association Maintenance Walls, as applicable. Each such instrument shall effectively amend the provisions of this Exhibit without the consent or joinder of any Owner, but each Owner of a Parcel or Sub-Unit shall, if requested by Declarant, join in the execution and recordation of such instrument. Declarant hereby further reserves and shall have the right at any time during the Development and Sale Period, without the consent or joinder of any Owner, to grant to the Owners Association, one or more easements, licenses, rights of entries or other rights of use for all or any portion of such areas or improvements, for the use, enjoyment, maintenance and control of such areas as part of the Area of Common Responsibility, Special Use Areas and/or Association Maintenance Walls, upon such terms and conditions as Declarant shall in its discretion from time to time deem necessary or desirable.

Special Use Areas and Special Benefited Areas

A. Special Use Areas.

Neither the Nanea at Koa Ridge - Phase I Parcel nor the Nanea at Koa Ridge - Phase II Parcel initially contains any Special Use Area.

However, notwithstanding anything to the contrary contained in the Declaration or any Governing Document and without limiting Declarant's other rights under the Declaration to create and establish Special Use Areas, Declarant reserves the right at any time during the Development and Sale Period to establish one or more Special Use Areas within the Nanea at Koa Ridge - Phase I Parcel or the Nanea at Koa Ridge - Phase II Parcel (and to add any portion of either such Parcel to any existing Special Use Area) for such purposes as Declarant in its discretion determines to be appropriate, for the primary benefit of all or portions of the Nanea at Koa Ridge - Phase I Parcel, the Nanea at Koa Ridge - Phase II Parcel, any Sub-Units thereon, and/or other Parcels and Sub-Units within the Koa Ridge Community. Without limitation, Declarant reserves the right to define and determine the boundaries of any such Special Use Area within the Nanea at Koa Ridge - Phase I Parcel or the Nanea at Koa Ridge - Phase II Parcel, to determine the Parcels and Sub-Units belonging to the Special Benefited Area to which such Special Use Area is assigned, to determine and define the scope of benefits and privileges to be afforded to and responsibilities to be delegated to such Special Benefited Area, and to determine the size of and appoint the members of the Special Benefited Area Committee for such Special Benefited Area. If and when any such Special Use Area and Special Benefited Area are established, and subject to adjustment and modification as provided in the Declaration, each of the Owners of Parcels and Sub-Units within the Special Benefited Area shall enjoy the benefits of and be subject to all terms and conditions of the Declaration and Governing Documents regarding the use, enjoyment and control of the Special Use Area, including the obligations of Special Benefited Area Assessments. Upon such action resulting in the creation, establishment

or modification of the boundaries of any such Special Use Area or Special Benefited Area, Declarant shall have the unilateral right to amend this Exhibit or to record an additional Supplement as it determines is necessary or desirable to exercise the rights hereby reserved by Declarant without the consent or joinder of any Owner, but each Owner of a Parcel or Sub-Unit shall, if requested by Declarant, join in the execution and recordation of such instrument. Declarant hereby further reserves and shall have the right at any time during the Development and Sale Period, without the consent or joinder of any Owner, to grant to the Owners Association, one or more easements, licenses, rights of entries or other rights of use for all or any portion of such areas, for the use, enjoyment, maintenance and control of such areas as a Special Use Area, upon such terms and conditions as Declarant shall in its discretion from time to time deem necessary or desirable.

B. Special Benefited Areas.

Neither the Nanea at Koa Ridge - Phase I Parcel nor the Nanea at Koa Ridge - Phase II Parcel initially belongs to any Special Benefited Area.

However, notwithstanding anything to the contrary contained in the Declaration or any Governing Document and without limiting Declarant's other rights under the Declaration to create and establish Special Benefited Areas, Declarant reserves the right at any time during the Development and Sale Period to designate either or both the Nanea at Koa Ridge - Phase I Parcel and/or the Nanea at Koa Ridge - Phase II Parcel, and/or any or all Sub-Units within either such Parcel, as belonging to one or more Special Benefited Areas (or part of one or more Special Benefited Areas) as Declarant in its discretion determines to be appropriate. Without limitation, Declarant reserves the right to define and determine the Parcels and Sub-Units within any Special Benefited Area, to define and determine the boundaries of any Special Use Areas assigned to such Special Benefited Area, to determine and define the scope of benefits and privileges to be afforded to and responsibilities to be delegated to such Special Benefited Area, and to determine the size of and appoint the members of the Special Benefited Area Committee for such Special Benefited Area. If and when any such Special Benefited Area is established, and subject to adjustment and modification as provided in the Declaration, each of the Owners of Parcels and Sub-Units within the Special Benefited Area shall enjoy the benefits of and be subject to all terms and conditions of the Declaration and Governing Documents pertaining to the Special Benefited Area, including all terms and conditions regarding the use, enjoyment and control of any Special Use Areas assigned to the Special Benefited Area, and also including the obligations of Special Benefited Area Assessments. Upon such action resulting in the creation, establishment or modification of the boundaries of any such Special Use Area or Special Benefited Area, Declarant shall have the unilateral right to amend this Exhibit or to record an additional Supplement as it determines is necessary or desirable to exercise the rights hereby reserved by Declarant without the consent or joinder of any Owner, but each Owner of a Parcel or Sub-Unit shall, if requested by Declarant, join in the execution and recordation of such instrument.

Merger of Condominium Property Regimes

Notwithstanding anything to the contrary contained in the Declaration or any Governing Document, if the Nanea at Koa Ridge - Phase I Parcel, the Nanea at Koa Ridge - Phase II Parcel,

or any other Parcel within the Community is subject or submitted to a condominium property regime, any two or more of such condominium property regimes may be merged by administrative merger or ownership merger if so permitted by the Parcel Covenants governing such condominium property regimes. However, no such merger shall affect the status of the Nanea at Koa Ridge - Phase I Parcel, the Nanea at Koa Ridge - Phase II Parcel or any other Parcel within the Community as a separate Parcel under the Declaration and other Governing Documents, alter or change the boundaries of any such Parcel, or otherwise amend the provisions of this Exhibit or any other Supplement, except as provided in a Supplement which is either (a) executed and recorded by the surviving Parcel Association(s) and which has been approved in writing by Declarant during the Development and Sale Period or thereafter by the Board, or (b) executed and recorded by Declarant during the Development and Sale Period in accordance with the provisions of Sections 7.1(c) and 18.3 of the Declaration, or thereafter by the Board in accordance with the provisions of Section 7.1(c) of the Declaration.

Recordation of Subdivision File Plan

Declarant may submit to the Bureau a proposed file plan depicting Lot 2, Lot 4, and/or any of the easements herein described. Upon the approval and filing of any such file plan at the Bureau, the descriptions of and references to Lot 2, Lot 4, and any such easements, as set forth in such file plan, shall supersede the descriptions contained herein or in any other Exhibit attached to the Declaration. In the event of any conflict between the file plan and the description of Lot 2, Lot 4, or any easement contained herein or in any other Exhibit to the Declaration, the file plan shall control. Notwithstanding anything herein or in the Declaration or any Governing Documents to the contrary, Declarant hereby reserves and shall have the right to execute and record in the Bureau an instrument confirming the approval and filing of said file plan and declaring that the descriptions of Lot 2, Lot 4, and/or any easements herein described shall be as set forth in the file plan. Such instrument shall effectively amend the descriptions of Lot 2, Lot 4 and any easements herein described without the consent or joinder of any Owner, but each Owner of a Parcel or Sub-Unit shall, if requested by Declarant, join in the execution and recordation of such instrument.

EXHIBIT “B”

Additional Property

ITEM I:

Lots B-1, B-2 and B-3 as shown on survey map dated November 27, 2019, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-12, on November 29, 2019, and more particularly described in Affidavit of Surveyor recorded in the Bureau of Conveyances of the State of Hawaii (“recorded”) as Document No. A-72830950, as amended by Amendment to Affidavit of Land Surveyor recorded as Document No. A-73460760.

ITEM II:

Lot C-1 as shown on survey map dated March 12, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-54, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded as Document No. A-73950481.

ITEM III:

Lots D-2, D-3 and D-4 as shown on survey map dated April 15, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-69, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded as Document No. A-73950482 as amended by Amendment to Affidavit of Land Surveyor recorded as Document No. A-74320234.

ITEM IV:

Lots 1, 3, 5 to 8, inclusive, and 9 as shown on survey map dated March 3, 2020, approved by the City and County of Honolulu, Department of Planning and Permitting, DPP File Number 2018/SUB-165, on March 13, 2020, and more particularly described in Affidavit of Surveyor recorded as Document No. A-73950483.

ITEM V:

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

Lot 97-B-4-C, area 16.721 acres, more or less;
Lot 1-A-22-C-2, area 38.405 acres, more or less;
Lot 1-A-22-D-2, area 0.107 acre, more or less; and
Lot 1-A-22-E-3, area 0.485 acre, more or less;

as shown on Map 1047, 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 lands deregistered from the Land Court System pursuant to instruments recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-65500662 and A-65500663.

ITEM VI:

All of those certain parcels of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, being proposed LOT A, proposed LOT B and a portion of proposed EASEMENT 2, approximately as shown in shading on EXHIBIT "B-1" attached hereto and made a part hereof.

ITEM VII:

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 5812-B, area 16.378 acres, more or less, as shown on Map 692, 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 the land(s) described in Transfer Certificate of Title No. 468,718 issued to CASTLE & COOKE HOMES HAWAII, INC., a Hawaii corporation.

Note to clerk and title examiners:

This Declaration of Community Covenants is not intended to create an encumbrance on title to the property described in this Exhibit "B" or shown on Exhibit "B-1". Such title may be encumbered only with the consent of the owner of the applicable property by filing a Supplement in accordance with Chapter 17.

EXHIBIT "B-1"

Additional Property Map

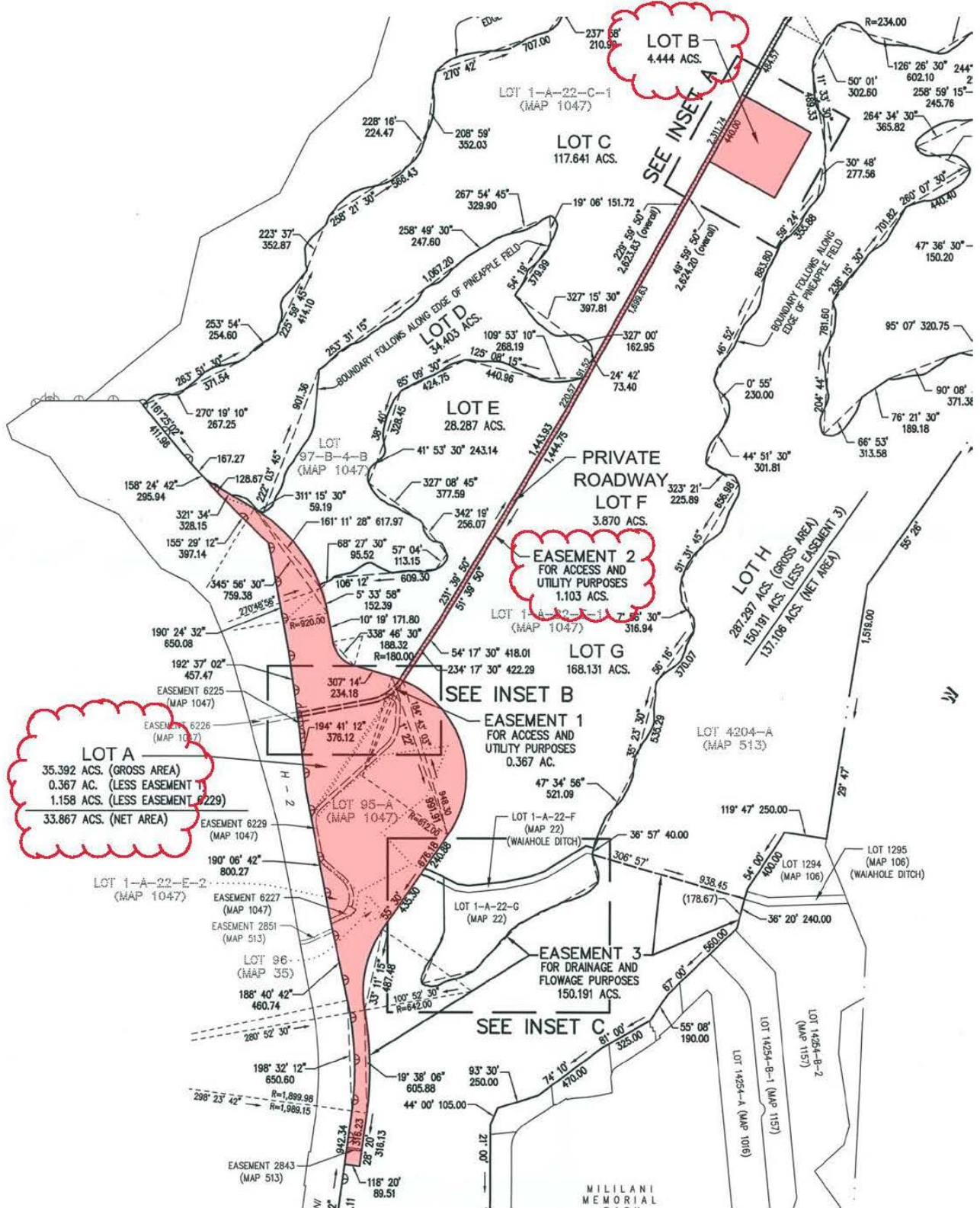


EXHIBIT “C”

Initial Rules

The purpose of these Rules is not to anticipate all acceptable or unacceptable behavior in advance. It is expressly intended that the Reviewer under Chapter 5 of the Declaration of Community Covenants to which these Initial Rules are attached, and the Board, as appropriate, have discretion to approve or disapprove actions or items, or to enforce or not enforce technical violations of the Governing Documents, based upon considerations consistent with the Governing Documents. As such, while something may be approved or permitted under one set of circumstances, the same thing may be disapproved under a different set of circumstances. Exercising discretion in approvals or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any circumstances it deems appropriate.

The following shall apply to all of Koa Ridge until such time as modified pursuant to the Declaration of Community Covenants to which these Initial Rules are attached. All terms used in these Initial Rules without specific definition shall have the same meaning as in the Declaration of Community Covenants, and all references to specific Chapters and Sections contained in these Initial Rules shall refer to the Chapters and Sections of the Declaration of Community Covenants.

1. General. Koa Ridge shall be used only for purposes consistent with the Master Plan, the Declaration of Community Covenants, and any Supplement.

2. Restricted Activities. Unless expressly authorized by, and then subject to such conditions as may be imposed by the Declarant during the Development and Sale Period and thereafter by the Board, the following activities are prohibited within Koa Ridge:

(a) Failure to observe and perform the requirements of the County Traffic Code, or any traffic rules and regulations from time to time established by the Declarant or the Board, as described below;

(b) Use of bicycles, carts, mopeds, skateboards, roller skates, scooters, or other personal transportation devices on pathways and sidewalks from time to time designated by the Declarant or the Board exclusively for pedestrian or joggers use, except for wheelchairs and similar medical assistance equipment;

(c) Parking any vehicles in designated “no parking” areas, or parking of mobile homes, recreational vehicles, boats and other watercraft, and trailers in areas other than those designated by the Declarant or the Board for such purposes; provided, service, and delivery vehicles are permitted in such areas and during such periods the Declarant or the Board as applicable designates, and temporary marketing and construction trailers and vehicles are permitted in such areas and during such periods the Declarant or the Board as applicable designates;

(d) Parking or storage of bicycles, carts, mopeds, skateboards, roller skates, scooters, or other personal transportation devices upon, the keeping or storage of trash or equipment upon, or any other obstruction of pathways, sidewalks, bikeways, or roadways within Koa Ridge, except in areas from time to time designated by the Declarant or the Board for such purposes and during such permitted time periods as from time to time established by the Declarant or the Board;

(e) Use or operation of dirt bikes, dune buggies, motorized carts, all-terrain vehicles or other recreational vehicles within the Area of Common Responsibility, except in areas from time to time designated by the Declarant or the Board, and except as specifically permitted by the Declarant or the Board;

(f) Storage or keeping of inoperable vehicles anywhere within Koa Ridge, except that the storage of operable vehicles is permitted in assigned parking spaces in residential developments, and except in connection with vehicle sales dealerships and automobile repair and service facilities that are approved as conditional uses under Section 7.1(g);

(g) Use of any garage, carport or parking space within Koa Ridge for human habitation or as a den, family room, spare bedroom or other living area of any home or apartment; further, garage doors will be kept closed (i) overnight, and (ii) during the day when garages are not being actively used by persons in the normal and customary course or for the operation of clothes washers and dryers;

(h) Raising, breeding, or keeping animals on Residential Parcels or Restricted Residential Parcels, except that a reasonable number of dogs, cats, or other usual and common household pets may be kept, and except that reasonably necessary service or assistance animals as mandated by federal, state or local law, regulation or ordinance, including by way of example (i) service animals, guide dogs and signal dogs, as provided in Chapter 515 of the Hawaii Revised Statutes, (ii) service animals under the American with Disabilities Act, and (iii) assistance animals under the Fair Housing Act, (collectively, “**Permitted Assistance Animals**”) may be kept and used in accordance with the provisions thereof. Animals brought into the Area of Common Responsibility shall be kept on a leash or otherwise confined in a manner acceptable to the Declarant or the Board, as applicable. Any animal which is permitted to roam free, or, in the Declarant’s or the Board’s discretion, makes or emits objectionable noise or odors, endangers the health or safety of any individual or other animal, or constitutes a nuisance, unreasonable disturbance, or unreasonable inconvenience shall be removed upon the Declarant’s or Board’s request. If the animal’s owner fails to honor any such request, the Declarant or Board may, in addition to the remedies and sanctions described in the Declaration of Community Covenants, remove or provide for the removal of the animal from Koa Ridge.

(i) Except for Permitted Assistance Animals as required to be allowed under applicable federal, state or local law, regulation or ordinance, the following animals shall not be raised, bred or kept on any Parcel, Common Area or Area of Common Responsibility without the specific approval of the Reviewer:

(i) chickens, geese, ducks, turkeys, other poultry, and parrots, cockatoos, peafowl, and similar fowl;

(ii) horses, cattle, goats, sheep, pigs, alpaca, llamas and other livestock; and

(iii) such other species or categories of animals as the Declarant (during the Development and Sale Period) or the Board (after the expiration of the Development and Sale Period) shall in its discretion determine generally to be a nuisance, a disturbance, objectionable or a danger to the health or safety to the Occupants of Koa Ridge;

(j) Any activity, use or condition that emits foul or obnoxious odors or creates excessive noise or other conditions that tend to disturb the peace or threaten the safety of others, each as determined in the Declarant or the Board's reasonable discretion;

(k) Any activity, use or condition that violates local, state, or federal laws or regulations; however, the Declarant and the Board shall have no obligation to take enforcement action in the event of a violation;

(l) Any activity, use or condition that tends to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures, or which causes unhealthy conditions for residents of Koa Ridge or persons using the Common Area or other portions of Koa Ridge;

(m) Any noxious or offensive activity which in the Declarant's or the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to residents of Koa Ridge or persons using the Common Area or other portions of Koa Ridge;

(n) Outside burning of trash, leaves, debris, or other materials;

(o) Use or operation of leaf blowers, lawn mowers, lawn edgers, weed cutters, or other motorized or electrical landscaping equipment upon any Residential Parcel or street, roadway or sidewalk abutting any Residential Parcel, between the hours of 7:00 p.m. and 7:00 a.m.;

(p) Use and discharge of firecrackers and other fireworks, except with any required permits and in compliance with law;

(q) Use of remotely controlled aircraft, model planes, hovercraft, drones, and other flying equipment, except in areas from time to time designated for such use by the Declarant or the Board and during such permitted time periods as from time to time established by the Declarant or the Board;

(r) Accumulation or storage of rubbish, trash, garbage, or items for disposal except between regular garbage pick-ups, and then only in approved containers or contained or screened to the satisfaction of the Reviewer;

(s) Storage or placement of rubbish, trash, garbage, or other items for disposal on the Area of Common Responsibility, Common Area or on any street or sidewalk of Koa Ridge, except for items to be removed or picked up for disposal within twenty-four hours, and then only in approved containers or otherwise contained or screened to the satisfaction of the Reviewer;

(t) Discharge of firearms, except in connection with gun clubs and shooting ranges that have been approved as conditional uses under Section 7.1(g); provided, the Declarant and the Board shall have no obligation to take action to prevent or stop such discharge;

(u) On-site storage of fuel, except by automobile service and repair facilities that have been approved as conditional uses under Section 7.1(g) and except that a reasonable amount of fuel may be stored for emergency purposes and for the operation of maintenance vehicles, generators, and similar equipment;

(v) Any activity, use or condition which materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within Koa Ridge or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution; and

(w) Any sitework and any modification, construction or installation of any Improvement, permanently or temporarily, on any Parcel, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, fences of any kind, and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, “**Permitted Antennas**”) shall be permitted on Parcels, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and nearby or adjacent property.

(x) Hanging garments, towels, laundry, signs, or other objects from, and the accumulation or excessive storage of items on, balconies; provided that laundry drying facilities shall be permitted, subject to such requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and nearby or adjacent property.

3. Traffic Regulation. Except as otherwise exempted by the Declarant or the Board, all traffic regulations of the City and County of Honolulu, as amended from time to time (the “**County Traffic Code**”) shall apply to the private roadways and streets within the Community, and in the event of any differences between any of the Governing Documents and the County Traffic Code, the stricter provision shall apply. The Owners Association shall have the same rights as the City and County of Honolulu to enforce the provisions of the County Traffic Code within the Community, provided that such rights of enforcement shall not in any way limit the City and County of Honolulu’s right to enforce the County Traffic Code within the Community.

(a) In addition, The Declarant and the Board shall have the right from time to time to establish speed limits, turn restrictions, crosswalks, one-way regulations, directional signals, stop requirements, right-of-way and yield protocols, and other traffic directives and protocols for the private roadways and streets within the Community, to be observed by all drivers and users of such private roadway and streets.

4. Association Maintenance Walls. Except for Declarant, no person or entity shall place or install any sign to any Association Maintenance Wall or affix any object, vegetation or device to or alter or improve any Association Maintenance Wall unless such installation, fixture, alteration or improvement is first approved in writing by the Board. No person or entity shall pierce the surface or otherwise expose the interior portion of any Association Maintenance Wall to the elements or install landscaping, irrigation systems or other improvements in such proximity or manner so as to undermine or otherwise impair the structural integrity of any Association Maintenance Wall or impair the weather resistant finish thereon. If any Parcel Owner or Sub-Unit Owner allows any object, vegetation or device to be attached to any Association Maintenance Wall and it becomes necessary for the Owners Association to repair or perform maintenance on such Association Maintenance Wall, the Owners Association shall be entitled to require the Parcel Owner or Sub-Unit Owner to remove such object, vegetation or device prior to performing such maintenance and if such object, vegetation or device is not so removed, the Owners Association may remove same and charge the cost thereof to the Parcel Owner or Sub-Unit Owner as a Specific Assessment. The Owners Association shall have no liability for any loss or damage to any object, vegetation or device removed from any Association Maintenance Wall.

EXHIBIT “D”

Allocating Liability for Assessments and Allocating Votes Among Parcels and Sub-Units

1. **Assignment of Equivalent Units.** For purposes of (a) allocating Common Expenses among Parcels and Sub-Units, (b) determining the amount of the Owners Association’s lien for assessments levied against each Parcel and/or Sub-Unit, (c) allocating Special Benefitted Area Expenses among Parcels and Sub-Units, (d) allocating votes in the Association among Parcels and Sub-Units, and (e) other purposes specified in the Governing Documents, each Parcel and Sub-Unit shall be assigned equivalent units (“**Equivalent Units**”) as set forth in this Exhibit “D”. All defined terms used in this Exhibit “D” without being defined shall have the same meanings as in the Declaration of Community Covenants to which this Exhibit is attached.

(a) **Assignment of Equivalent Units to Parcels.** Except as otherwise provided in this Exhibit “D”, the number of Equivalent Units for each Parcel is determined in accordance with the table set forth below, based on that Parcel’s Use Designation (and in certain cases the uses being made upon that Parcel).

(b) **Assignment of Equivalent Units to Sub-Units.** If a Parcel contains Sub-Units, the Equivalent Units allocated to that Parcel shall be further allocated amongst the Sub-Units within the Parcel as follows.

(i) Allocation to Sub-Units within Civic Parcels and Community Support Parcels. If the Parcel is a Civic Parcel or Community Support Parcel, the Equivalent Units assigned to that Parcel shall be allocated to the Sub-Units within the Parcel in accordance with the table set forth below.

(ii) Allocation to Sub-Units within Parcels other than Civic Parcels and Community Support Parcels. Except in the case of Civic Parcels and Community Support Parcels, the Equivalent Units assigned to that Parcel shall first be allocated to the Residential Sub-Units within the Parcel in accordance with the table set forth below. The balance of Equivalent Units allocated to that Parcel shall then be allocated among the Non-Residential Sub-Units within the Parcel as follows:

(A) If all of the Non-Residential Sub-Units within the Parcel consist of condominium units existing under the same condominium regime, then the remaining Equivalent Units shall be allocated amongst the Non-Residential Sub-Units, pro rata, in accordance with the allocation of common interests in the condominium regime.

(B) If the Non-Residential Sub-Units within the Parcel do not consist of condominium units existing under the same condominium regime, then the remaining Equivalent Units shall be allocated among the Non-Residential Sub-Units, pro rata, in accordance with their size measured in square feet. For purposes of determining the size of each such Sub-Unit, (X) a Sub-Unit consisting of a subdivided lot shall be deemed to have the size shown in the subdivision map

creating such subdivided lot, without deduction for easements or other limitations on use, and (Y) a Sub-Unit consisting of a condominium unit shall be deemed to have the size stated in the condominium declaration for such condominium unit, plus the size(s) of any limited common elements designated for the exclusive use of such condominium unit as set forth in such condominium declaration.

(c) Special Provisions Regarding Assignment of Equivalent Units in Matters Pertaining to Special Use Areas and Special Benefitted Areas. With respect to any matter pertaining to a Special Benefitted Area (including any matter pertaining to the allocation of Special Benefitted Area Assessments and any matter pertaining to a Special Use Area assigned to any such Special Benefitted Area), each Parcel and Sub-Unit within the Special Benefitted Area shall be assigned Equivalent Units in accordance with paragraphs (a) and (b) above.

(d) Multiple Use Designations. In the event that a Parcel or Sub-Unit consists of two or more areas bearing different Use Designations, then (i) such Parcel or Sub-Unit shall be considered as having multiple Use Designations, but as to each only to the extent of that particular Use Designation, and (ii) the number of Equivalent Units assigned to such Parcel or Sub-Unit shall be the sum of the Equivalent Units assigned to all of the multiple areas within such Parcel or Sub-Unit.