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BARBARA PAULO

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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

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EXHIBIT "A" - DESCRIPTION OF LAND SUBJECT TO THIS DECLARATION

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("*Declaration*") is made by Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation, formed under the Hawaii Nonprofit Corporations Act, Chapter 414D, Hawaii Revised Statutes ("*Coop*" or "*Declarant*"). Except as otherwise specified herein, the capitalized words and phrases used in this Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E:

The Coop is the owner and developer of certain real property in Kunia, City and County of Honolulu, State of Hawaii, more particularly described in *Exhibit "A"* attached hereto and incorporated herein (the "*Project Site*"). All of the Project Site shall be subject to this Declaration.

All of the Project Site will be developed with certain common objectives, and Owners of Lots will have certain common interests. The Project Site will be developed with objectives designed to preserve the value of and to benefit all the property within the Project Site. The common development plan imposes reciprocal burdens and benefits on all of the Project Site, such that each portion and the entirety of the Project Site are both burdened by the provisions of this Declaration for the benefit of each other portion of the Project Site, and benefited by the burdens imposed on each other portion of the Project Site.

The Coop has deemed it desirable to create a common interest agricultural subdivision development which will be a "master planned agricultural community" with the powers and functions of (1) owning, maintaining and administering the Common Property for the use of its Members and authorized guests, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the assessments and charges hereinafter created.

The Coop hereby declares that all of the Project Site shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of promoting, preserving and protecting the agricultural use and value, of the Project Site, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement and agricultural use of the Project Site. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with the Project Site; (2) be binding upon all persons having any right, title or interest in the Project Site, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Project Site and any interest therein; (4) inure to the benefit of and be binding upon Declarant and its successive owners and each Owner and his or her respective successors-in-interest; and (5) may be enforced by the Coop, any Owner and other benefitted parties, if any, under the matters referenced in *Exhibit "A"* attached hereto.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1. Agricultural Activities.

Agricultural Activities means activities and uses for agricultural purposes permitted pursuant to Hawaii Revised Statutes Chapter 205 in the State Land Use Commission Agricultural District and the Land Use Ordinance of the City and County of Honolulu.

1.2. Agricultural Lot.

Agricultural Lot shall mean those Lots which are either Common Property or leased to an Owner under a Proprietary Lot Lease, but excepting any roadway lots.

1.3. Articles.

Articles mean the Articles of Incorporation of the Coop, as amended. A copy of the Articles is on file with the DCCA.

1.4. Assessment(s).

Assessment(s) means Common Assessments, Capital Improvement Assessments, Reconstruction Assessments and/or Special Assessments.

1.5. Authorized Vehicle.

Authorized Vehicle means a vehicle licensed by the City and County of Honolulu for use on public highways.

1.6. Board or Board of Directors.

Board or Board of Directors means the Coop Board of Directors elected in accordance with the Coop Bylaws and this Declaration.

1.7. Budget.

Budget means a written, itemized estimate of the Coop's income and Common Expenses prepared pursuant to the Bylaws.

1.8. Building.

Building means a permitted roofed structure the purpose of which is to support the permitted Agricultural Activities.

1.9. Burial Council.

Burial Council means the Burial Council of the Island of Oahu.

1.10. Bylaws.

Bylaws means the Coop's Bylaws adopted or to be adopted by the Board, as amended from time to time.

1.11. Capital Improvement Assessment.

Capital Improvement Assessment means a charge against the Owners and their Lots, representing the Coop's costs to install or construct any Improvements on any portion of the Common Property or any Improvements for the use, enjoyment, or benefit of the Owners and their Lots.

1.12. Close of Escrow.

Close of Escrow means the date on which an agricultural Proprietary Lot Lease for a Lot or other such instrument is executed leasing a Lot in the Project.

1.13. Common Assessment.

Common Assessment means the annual or supplemental charge against each Owner and his or her Lot, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Common Property, which charge shall be levied against all Owners and their respective Lots, as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Coop in its efforts to collect all assessments (other than Special Assessments) authorized pursuant to this Declaration.

1.14. Common Expenses.

Common Expenses means the actual and estimated costs of (i) maintaining, managing, operating, repairing and replacing the Common Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; (iv) managing and administering the Coop including, but not limited to, compensation paid by the Coop to Managers, accountants, attorneys and other consultants and employees; (v) all utilities, gardening, and other services benefitting the Common Property; (vi) management and maintenance of internet website(s) and related facilities; (vii) fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Common Property; (viii) bonding the Coop Directors, officers, agents, employees and Manager; (ix) taxes paid by the Coop; (x) amounts paid by the Coop for discharge of any lien or encumbrance levied against the Common Property, or portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Common Property; (xi) all Reserves; and all other items incurred by the Coop pursuant to this Declaration.

1.15. Common Property.

Common Property means all the real and personal property and Improvements which are owned in fee simple at any time by the Coop, or over which the Coop has an easement or encroachment permit for the use, care or maintenance thereof, for the common benefit, use and enjoyment of Owners, as further provided in Article III of this Declaration or which the Coop is required to maintain as provided in Article III and Article V of this Declaration. The Common Property includes (for maintenance purposes but not necessarily fee ownership) without limitation and as applicable (i) all historic sites, walls, median strips, roads, slopes, berms, landscaping, utilities and irrigation and drainage systems in public property or public rights-of-way in or near the Project Site designated for maintenance by the Coop pursuant to this Declaration or any Supplemental Declaration, any agreement between a Local Governmental Agency and Declarant or the Coop, or on any Recorded subdivision map, parcel map or lot line adjustment of the Project Site, the maintenance of which is not the responsibility of a Local Governmental Agency, (ii) the Common Property as hereafter defined, (iii) areas adjacent to or in the vicinity of the Project Site over which the Coop is granted a maintenance or access easement, and (iv) Common Driveways. Title to all or any portion of the Common Property may be subject to a prior dedication to a Local Governmental Agency. Any depiction of the Common Property attached to this Declaration, any Supplemental Declaration or any Deed conveying Common Property is merely for illustrative purposes only and the "as built" condition shall control.

1.16. Coop.

Coop, also referred to herein as the Declarant, means Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation (formed pursuant to the Hawaii Nonprofit Corporation Act), its successors and assigns.

1.17. Coop Easement.

Coop Easement means the easement granted to the Coop by this Declaration to install, construct, maintain, repair and replace wells, reservoirs, utility lines and facilities. Certain Lots shall be subject to Coop Easements for wells and reservoirs.

1.18. County.

County means the City and County of Honolulu.

1.19. County Planning Director.

Planning Director means the Director of the Department of Planning and Permitting (or such successor department) of the County.

1.20. DCCA.

DCCA means the Department of Commerce and Consumer Affairs of the State of Hawaii or such successor governmental agency of the State of Hawaii which duties include administration of the sale of subdivided lands pursuant to the Uniform Land Sales Act, Hawaii Revised Statutes Chapter 484, or any similar Hawaii statute hereinafter enacted.

1.21. Declarant.

Declarant, also referred to herein as the Coop, means Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation (formed pursuant to the Hawaii Nonprofit Corporation Act), its successors and assigns.

1.22. Declarant Control Period Expiration Date.

Declarant Control Period Expiration Date means the earlier of (i) the expiration of two (2) years after the first Close of Escrow for a Lot in the Project Site; or (ii) the date on which the Coop records an amendment to the Declaration stating that the Coop elects to terminate the Declarant Control Period.

1.23. Declaration.

Declaration means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements, as amended from time to time.

1.24. Director.

Director means the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.25. Farm Rules.

Farm Rules means the Farmer's Committee standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Declaration, as amended from time to time.

1.26. Farmer's Committee.

Farmer's Committee means the committee created pursuant to Article XI hereof.

1.27. Farmsite Diagram.

Farmsite Diagram means for each Lot, such map for such Lot, as depicted on the Final Plat or other map, showing the lot's boundary, setback areas, transition zones, safety zones, easements, natural areas, any archaeological preservation features and easements, and well or reservoir easements and buffer zones protecting the same and no fill zones as applicable.

1.28. Final Plat.

Final Plat means the Land Court Map to be approved for the Project Site.

1.29. Historic Preservation Plan and Historical Sites.

"Historic Preservation Plan" shall mean a Preservation Plan approved by the State of Hawaii. "Historical Sites" means burial grounds and other historically and/or archaeologically significant sites that are identified and/or existing within the Project.

1.30. Improvement.

Improvement means all structures and appurtenances thereto, including but not limited to buildings, outbuildings, sheds, walkways, clustered mailbox structures, sprinkler pipes, irrigation systems, storm drainage systems, garages, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, fire breaks, poles, antennae, signs, and permanently affixed equipment. Improvement also means the following: (i) all exterior modifications to a Building (including, but not limited to, painting the exterior of any Building or other structure; changing the roof material, windows or exterior doors of any Building or other structure; and building, constructing or erecting any additions and/or demolishing or conducting any exterior remodeling); (ii) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; and (iii) the grading, excavation, filling or similar disturbance of the surface of the land, including, without limitation, change of grade, change of grade level or change of drainage pattern.

1.31. Local Governmental Agency.

Local Governmental Agency means the County and any other regional, local or municipal governmental entity or agency and any special assessment district, maintenance district or community facilities district.

1.32. Lot.

Lot means any lot or parcel of land shown upon any Recorded subdivision map, Land Court map, file plan, parcel map or lot line adjustment of any portion of the Project Site, together with the Improvements, if any, thereon, and shall include, but not be limited to Agricultural Lots and the roadway lots.

1.33. Manager.

Manager means the Person, firm or agent employed as an independent contractor by the Coop to perform functions of the Coop, as limited by the Restrictions and the terms of the agreement between the Coop and such Person.

1.34. Member.

Member means every Person holding a Membership in the Coop.

1.35. Membership.

Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.36. Mortgage, Mortgagee, First Mortgage, First Mortgagee, Mortgagor.

Mortgage means any Recorded or otherwise perfected instrument, which is not a fraudulent conveyance under Hawaii law, given in good faith and for valuable consideration as security for the performance of an obligation, including without limitation a mortgage, deed of trust or

agreement of sale, but shall not include any instrument creating or evidencing solely a security interest arising under the Hawaii Uniform Commercial Code, Hawaii Revised Statutes Chapter 490, as amended. First Mortgage means a Mortgage which is the first and most senior of all Mortgages upon the same property. Mortgagee means the holder of a note or interest secured by a Mortgage. First Mortgagee means the holder of a First Mortgage. Mortgagor means the party executing a Mortgage and creating the Mortgage Lien. A Declarant First Mortgage means a First Mortgage created by the Declarant. A Declarant First Mortgagee means a First Mortgagee and its successors, successors in trust and assigns, including without limitation any purchaser at a foreclosure sale or a grantee pursuant to a deed in lieu of foreclosure, who receives a First Mortgage from the Declarant.

1.37. Notice and Hearing.

Notice and Hearing means written notice and a hearing before the Board or the Farmer's Committee, as applicable, as further provided in the Bylaws.

1.38. Notice of Lien.

Notice of Lien shall have the meaning set forth in Section 8.9.

1.39. Owner.

Owner means the Person or Persons, including the Coop holding a fee simple or long term proprietary leasehold interest of Record to a Lot. The term "Owner" includes a seller under an executory contract of sale, but excludes Mortgagees.

1.40. Owner Parties.

Owner Parties means the family, guests, tenants, invitees and contract purchaser of an Owner.

1.41. Person.

Person means a natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property.

1.42. Preservation Site.

Preservation Site or Sites shall have the meaning ascribed in Section 9.1.1.

1.43. Project or Project Site.

Project or Project Site means the property described in *Exhibit "A"*.

1.44. Proprietary Lot Lease

Proprietary Lot Lease means those certain long term leases issued by the Coop, its successors and assigns, for an Agricultural Lot in the Project.

1.45. Reconstruction Assessment.

Reconstruction Assessment means a charge against each Owner and such Owner's Lot, representing a portion of the Coop's cost to reconstruct any Improvements on the Common Property, pursuant to the provisions of this Declaration.

1.46. Record, Recorded, Recording, Recordation.

Record, Recorded, Recording, Recordation or a like reference means an instrument of record in, or the act of recording or filing or having recorded or filed an instrument with the Assistant Registrar of the Land Court, Bureau of Conveyances ("*Bureau*") and/or the Department of Commerce and Consumer Affairs of the State of Hawaii, as appropriate for the instrument.

1.47. Reserves.

Reserves means those Common Expenses for which Coop funds are set aside pursuant to Article VIII of this Declaration for funding the periodic resurfacing, painting, maintaining, repairing and replacing of the major components of the Common Property which would not reasonably be expected to recur on an annual or less frequent basis, such amounts to be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for common interest developments throughout the County.

1.48. Restrictions.

Restrictions mean this Declaration, any Supplemental Declarations, the Articles, the Bylaws, the Farmer's Committee Rules, the Rules and Regulations, and the resolutions of the Board.

1.49. Rules and Regulations.

Rules and Regulations means the Rules and Regulations adopted by the Board as provided herein.

1.50. Site Plan.

Site Plan means the Site Plan for the Kunia Loa Ridge Farms Agricultural Subdivision.

1.51. Special Assessment.

Special Assessment means a charge against a particular Owner directly attributable to or reimbursable by such Owner equal to the cost incurred by the Coop for corrective action performed pursuant to the Restrictions, or levied by the Board as a reasonable fine or penalty for noncompliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

1.52. Supplemental Declaration.

Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document adding real property to the Project Site or supplementing this Declaration which may be Recorded pursuant to Article II of this Declaration.

**ARTICLE II
DEVELOPMENT; LAND CLASSIFICATIONS;**

2.1. Land Classifications.

The Project Site, including each portion of annexed territory described in a Supplemental Declaration, shall be designated according to one or more of the following land classifications:

2.1.1 Agricultural Lots.

The Lots are classified as within the agricultural district. Each Lot must be used only in accordance with the uses permitted in Chapter 205, Hawaii Revised Statutes, as amended from time to time, except that no Farm Dwellings shall be permitted on any of the Lots. Pursuant to Chapter 205, Hawaii Revised Statutes, the Lots are exempt from the subdivision standards of the County and the County will approve the subdivision of the lots for ownership and financing purposes but not for development purposes. The entire Project will be considered a single zoning lot for development and building permit purposes. The Lots may only be used for the agricultural purposes specified in Chapter 205, Hawaii Revised Statutes and by the zoning and permitting requirements of the County. The Agricultural Lots shall be limited to ninety-nine (99) Lots in total. There shall be no subdivision of any Agricultural Lot in order to adhere to the requirement that there shall always be no more than ninety-nine (99) Agricultural Lots. All of the Lots will become subject to and will continue to be subject to a Joint Development Agreement with the County. The Coop, its successors and assigns, shall have the right to submit all of the Lots to an Agreement for Issuance of Conditional Use Permit and a Joint Development, without any requirement of consent from any Proprietary Lot lessees, that will be enforceable by the County. All Proprietary Lot Leases issued by the Coop shall be subordinate to this right of causing all Lots to be subject to such Joint Development.

2.1.2 Common Property.

The real property designated as Lot 48, any improvements to be constructed thereon by the Coop, and the Coop Easement Areas as shown on the Final Plat and other property as described herein.

**ARTICLE III
COMMON PROPERTY; USES AND RESTRICTIONS**

3.1. Owners' Rights of Enjoyment.

Every Owner and, to the extent permitted by such Owner pursuant to the Restrictions, the Owner Parties, employees and other invitees who are farming such Owner's Lot, shall have a right of ingress and egress and of enjoyment in, to and over the Common Property which shall be appurtenant to and shall pass with title to every Lot, subject to the Coop's right to exercise exclusive jurisdiction over and control of the Common Property (other than public property) and the following provisions:

3.1.1 Additional Common Property.

The right of the Coop to designate additional Common Property pursuant to the terms of Article II hereof.

3.1.2 Rules and Regulations.

The Coop's right to establish reasonable Rules and Regulations pertaining to the use of the Common Property and any facilities located thereon, including, but not limited to, the right and obligation of the Coop to enforce all parking restrictions for parking areas within the Common Property as set forth in Section 3.3 below.

3.1.3 Borrowings.

The Coop's right in accordance with the Articles, Bylaws and this Declaration, with the approval of Owners representing at least seventy-five percent (75%) of the Coop voting power, to borrow money for the purpose of improving, repairing or adding to the Common Property and facilities and, to mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this subsection.

3.1.4 Suspension of Rights.

The Coop's right to suspend the Membership rights and other rights and easements of any Owner and Owner Parties to use the Common Property and the facilities and Improvements located thereon, for any period during which any assessment against such Owner's Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any noncontinuing infraction of the Rules and Regulations of the Coop as more fully provided in the Bylaws. Any suspension of Membership rights or right to use any Common Property facilities (i) shall be made only by the Board, after Notice and Hearing, and (ii) shall not limit or preclude pedestrian or vehicular access to such Owner's Lot.

3.1.5 Common Property Transfers.

The Coop's rights set forth in Subsection 5.2.13 and Article XIII of this Declaration.

3.1.6 Use By the Coop.

The right of the Coop (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Common Property, for the benefit of the Coop, to complete the construction of any roadways or other Improvement to be installed thereon, as well as the right to nonexclusive use of the Common Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and special events for promotional purposes, which right the Coop hereby reserves; provided, however, that such use rights shall terminate on the Declarant Control Period Expiration Date except that the Coop shall continue to enjoy such rights as an Owner of any Lots the Coop continues to own.

3.1.7 Reconstruction of Improvements.

The Coop's right to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Property.

3.1.8 Maintenance.

The Coop's right to maintain and repair the Common Property, including without limitation the right to plant windbreaks upon any portion of the Common Property.

3.1.9 Restricted Areas.

The Coop's right to reasonably restrict access to water system facilities, maintenance facilities, open space areas and similar areas of the Common Property. A Supplemental Declaration may designate exclusive use areas within the Common Property for the exclusive use or maintenance by one or more Owners (such as common driveway areas). The Coop shall have exclusive control over all of the Common Property except for public property and any exclusive use or maintenance area designated in a Supplemental Declaration or created by the Association pursuant to Subsection 5.2.5 below.

3.2. Delegation of Use.

The Owner of a Lot may delegate, in accordance with the Restrictions, the Owner's right of enjoyment of the Common Property and facilities to Owner Parties who use the Owner's Lot, subject to reasonable regulation by the Board.

3.3. Parking and Traffic Control.

Temporary parking is permitted within the Common Property only within spaces and areas clearly marked for such purpose. The Coop, through the Board, is empowered to establish "parking" and restricted and "no parking" areas within the Common Property.

3.4. Easements for Pedestrian and Vehicular Traffic.

In addition to the general easements for use of the Common Property reserved herein, the Coop hereby reserves to itself, to all future Owners within the Project Site, and to every Owner and their respective agents, employees, guests, tenants, invitees and successors nonexclusive

easements appurtenant to each Lot in the Project Site for vehicular and pedestrian traffic over any and all private streets and walkways, if any, within the Common Property, subject to the parking provisions set forth in Section 3.3 above.

3.5. Waiver of Use.

No Owner may exempt himself or herself from personal liability for assessments duly levied by the Coop, nor release his or her Lot, or other property in the Project Site from the liens and charges hereof, by waiver of the use and enjoyment of the Common Property or any facilities thereon or by abandonment of his or her Lot, or any other property in the Project Site.

3.6. Title to the Common Property.

3.6.1 Transfer.

No Owner shall interfere with the exercise by the Coop of its easement for maintenance over Common Property which is owned in Proprietary Lot Leasehold by such Owner. Neither the fee interest nor the leased fee interest in the Agricultural Lots may be conveyed to any person or entity other than the Coop.

3.6.2 Character of Common Property Improvements.

The nature, design, quantity, quality and all other attributes of the Common Property, and the facilities and amenities thereon, shall be determined in the Coop's sole and absolute discretion. The Coop shall be unconditionally obligated to accept title to and maintenance responsibility for the Common Property.

3.7. Taxes.

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Coop to obtain separate real estate tax assessment of the Owner's Lot. If, in the Coop's opinion, any taxes or assessments constitute a lien on the Common Property, or any part thereof, such taxes or assessments may be paid by the Coop and each Owner shall be obligated to pay or to reimburse the Coop for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Common Property and attributable to the Owner's own Lot and interest in the Common Property.

3.8. Communications Systems.

There are no telephone or other such communication systems for the benefit of the Lots.

3.9. Easements for Clustered Mailboxes.

In order to comply with the various requirements if any of the State, County and the United States Postal Service, clustered mailboxes may be installed within the Project Site. Declarant hereby reserves for the benefit of Owners and the United States Postal Service easements on and over the affected portions of the Project Site for delivery, deposit and retrieval of mail.

3.10. Declarant Easements.

The Coop hereby reserves easements and the right to designate new easements for access, ingress and egress, parking, historical or preservation areas, water lines and facilities, sewer lines and facilities, drainage systems and utility purposes over all Common Property, Lots, and the Project Site and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems, parking lots, historical or preservation areas and other devices and Improvements which may be reasonably necessary for the development, operation or use of the Project together with the right to grant said easements to any governmental agency, the Coop, utility companies, owners of lands adjacent to or in the vicinity of the Project or any other party. The Coop also reserves the right to grant easements over the Common Property, or any portion thereof for exclusive use by any Owner or Owners of a Lot or for which Close of Escrow has already occurred.

3.11. Regular Inspection.

3.11.1 Duty to Inspect.

It shall be the duty of the Board to have the Common Property inspected at least once every year.

3.11.2 Purpose of Inspection.

The purpose of the inspection shall be to (i) determine whether the Common Property is being maintained adequately in accordance with prudent maintenance practices appropriate for Improvements such as those comprising the Common Property; (ii) identify the condition of the Common Property and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair; and (iii) recommend preventive actions (such as repainting or vegetation removal) which may be taken to reduce potential maintenance costs to be incurred in the future.

3.11.3 Scope of Inspection.

All of the Common Property and Improvements thereon including, but not limited to, all roadways, structures, walls, walkways, irrigation systems, and drainage devices thereon shall be inspected.

3.11.4 Experts and Consultants.

The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

3.11.5 Report to Owners.

The Board shall have a report of the results of the inspection of the Common Property required by this section prepared. The report shall be furnished to Owners and Declarant within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

- (a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.

ARTICLE IV COOP

4.1. Organization.

The Coop is organized as a Hawaii non-profit, non-stock corporation under the Hawaii Nonprofit Corporation Law, Hawaii Revised Statutes Chapter 414D, and is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there is any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

4.2. Membership and Ownership of the Coop .

Members of the Coop are the owners of the Coop holding ownership interests as reflected on the books of the Coop ("Membership Interest). Each Member shall be issued a Certificate of Ownership but in the event of conflict, the books of the Coop shall control. A Member transferring its ownership interest shall comply with the requirements for transfer as provided in the Coop Bylaws. Appurtenant to each Member's ownership interest in the Coop is an inseparable right to the exclusive use and possession of a Lot in the Project Site. The Coop shall designate the Lot that is forever appurtenant to the Membership Interest and for the exclusive use and possession by the Member by issuing a proprietary lot lease for the Lot. Membership in the Coop and all such Proprietary Lot Leases are subject to the Restrictions. All Proprietary Lot Leases shall be permanent appurtenances to the Membership Interest. In all events the Membership Interest and the Proprietary Lot Lease appurtenant thereto shall be inextricably connected and one may not be transferred or assigned without the other. Any financing of an acquisition of a Lot through purchase of a Membership Interest shall require a pledge of the Membership Interest. Such pledge of the Membership Interest shall automatically include the Proprietary Lot Lease appurtenant to the Membership Interest and at the option of the lender, the a separate mortgage of the Proprietary Lot Lease may be included. Neither the mortgage of the

Proprietary Lot Lease nor the pledge of the Membership Interest may be foreclosed upon without the other.

4.2.1 **Transfer of Membership.**

An Owner's Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of proprietary leasehold title to the Owner's appurtenant Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Coop. All transfers of Membership interests and assignments of the Proprietary Lot Leases for the appurtenant Lot are subject to the notice provisions provided for in the Bylaws of the Coop. The Coop may levy and collect a transfer fee ("**Transfer Fee**") against the transferring Owner(s) and their Lots (which fee if not paid, shall be added to the Common Assessments chargeable to the Lots being transferred). The fee shall be collected at the closing of the transfer and deposited in a maintenance fund as determined by the Board) to reimburse the Coop for the administrative costs of transferring the Memberships to the new Owners on the Coop's records.

(a) The Transfer Fee shall be set by the Board at prevailing rates for common interest ownership communities. Transfers by or to Declarant, transfers among co-Owners, to an Owner's estate, surviving spouse, or child upon the death of the Owner, or to an entity wholly owned or controlled by the transfesror or to a First Mortgagee upon foreclosure or upon a assignment of Proprietary Lot Lease in lieu of foreclosure shall be exempt from the Transfer Fee.

(b) The obligation to pay the Transfer Fee shall be first payable by the transferring Owner(s) but if not paid shall become part of the Common Assessments charged against the transferred Lot and payable by the new Owner.

4.2.2 **Suspension of Membership Rights.**

The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Assessment against such Member and the Lot owned by such Member is delinquent. Any such suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for herein.

ARTICLE V COOP FUNCTIONS

5.1. **Permitted Functions.**

The Coop is formed exclusively for those purposes and activities which are specifically and directly related to (i) developing and marketing the Project, (ii) equipping, maintaining, operating and utilizing the Common Property, (iii) collecting assessments to finance the maintenance and utilization of the Common Property, and (iv) administering and enforcing the Restrictions (collectively, the "**Permitted Functions**"). Notwithstanding the foregoing, Permitted Functions do not include those activities prohibited by Section 5.4 below. Except for the costs associated with developing and marketing the Project, the funds and resources of the Coop shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing

in this Section 5.1 shall be deemed to preclude the use of the Common Property facilities by the Coop for promotional special events and other purposes as authorized by Subsection 3.1.6.

5.2. Powers and Duties.

The Coop has all of the powers of a Hawaii Nonprofit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. Subject to the Restrictions, the Coop has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Coop. Subject to the foregoing provisions, the Coop, acting through the Board, has the power to perform the following acts:

5.2.1 Assessments.

The power and duty to levy Assessments on the Owners of Lots and to collect and enforce payment of such Assessments in accordance with the provisions of Article VIII hereof.

5.2.2 Repair and Maintenance.

The power and duty to accept title to and to paint, resurface, plant, maintain and repair in a neat and attractive condition, all Common Property.

5.2.3 Compliance with Regulatory Requirements.

The Project Site is subject to the Specific Regulatory Use Restrictions and Requirements set forth in Article IX hereof. In performing its maintenance obligations pursuant to the Restrictions, the Coop shall comply with the requirements of the regulatory requirements as described in Article IX.

5.2.4 Modifications by Owners.

No Owner shall place or install any sign or other Improvement or alter or remove the Improvements on the Common Property unless such placement, installation or alteration is first approved in writing by the Board.

5.2.5 Easements and Rights-of-Way.

The power but not the duty to grant and convey to any Person easements, licenses, or rights-of-way in, on, over or under the Common Property and fee title to parcels or strips of land which comprise a portion of the Common Property, for purposes consistent with the terms of this Declaration, including without limitation easements for (i) roads, streets, walks, trails, driveways, parkways, landscaping, parking areas, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iv) historical or preservation areas or trails; and (v) exclusive easements or fee title to Owners for wind break or landscaping purposes so long as the Board makes a finding that the use and maintenance of such area is more appropriately placed with the

Owner rather than the Coop; and (v) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

5.2.6 Manager.

Subject to Section 5.4, the power and duty to contract with a professional Manager for the Coop. Except as otherwise provided in this Declaration, any such management agreement shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Coop, acting through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

5.2.7 Rights of Entry and Enforcement.

The power but not the duty, after Notice and Hearing, to enter any Lot or Common Property without being liable to any Owner, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot or Common Property, if for any reason whatsoever the responsible Owner fails to maintain and repair any such area as required by the Restrictions; provided that no items of construction on any such Lot or Common Property may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any maintenance and repair completed in compliance with these provisions is the responsibility of the Owner and may be assessed against the responsible Owner, as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Any physical damage caused by entry upon any Lot or Common Property shall be repaired by the entering party. The Coop may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Coop, the prevailing party is entitled to recover reasonable attorneys' fees.

5.2.8 Legal and Accounting Services.

Subject to Subsection 5.2.10, the power but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Common Property, enforcing the Restrictions, and performing any of the other Coop duties or rights.

5.2.9 Audit.

The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Coop's books and records; provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Manager or the Coop.

5.2.10 Litigation.

Subject to Sections 5.4, 20.5, and Article XIX, the power but not the duty to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Coop in matters pertaining to (i) the application or enforcement of the Restrictions and (ii)

damage to the Common Property. Any recovery by the Coop with respect to any damage to or defect in the Common Property shall be utilized solely for the purpose of paying for the costs of correcting such Common Property damage or defect.

5.2.11 **Release Security.** The power and duty to release security and exonerate bonds posted by the Coop to secure its obligations immediately upon satisfaction of the obligations giving rise to such security.

5.2.12 **Website.** The power but not the duty to establish and maintain a website and provide internet services to the Owners and other residents within the Project Site.

5.2.13 **Acceptances and Conveyances of Property.** The power to join with an Owner, a Local Governmental Agency, utility company, or other person or entity in the execution of a lot line adjustment, deed and/or grant of easement for the purpose of accepting or conveying title to property, including without limitation, any portion of the Common Property, and in furtherance thereof to deannex such portion of the Common Property from this Declaration, as necessary to transfer title, provided and on condition that any such lot line adjustment and/or conveyance is made for any of the following purposes: (i) to eliminate encroachments due to engineering errors or errors in construction of any Improvements upon any of the affected property; (ii) to permit changes in the development plan in circumstances where such changes are the result of topography, obstruction, hardship, aesthetic considerations or environmental conditions; (iii) to fulfill the requirement of a Local Governmental Agency; or (iv) to transfer the burden of management and maintenance of any Common Property which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of general use or benefit to the membership at large of the Coop.

5.3. **Rules and Regulations.**

The Board may adopt such Rules and Regulations as it deems proper for the use, occupancy and maintenance of the Project Site. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Common Property or must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Declaration, any applicable Supplemental Declaration, the Articles and the Bylaws, and may not be used to amend any of such documents.

5.4. **Prohibited Activities.**

Notwithstanding any other provisions of this Declaration or the other Restrictions, the Coop is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Coop funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Coop:

5.4.1 **Political Activities.** The Coop shall not (i) participate in Federal, State and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Project Site (e.g., endorsement or support of (1) legislative or administrative actions by a Local Governmental Agency or state or federal agency which affect

persons or property outside the Project Site, (2) candidates for elected or appointed office, and (3) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

5.5. Safety and Security.

All Owners and users of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Project. The Coop may, but shall not be obligated to, maintain or support certain activities within the Project designed to enhance the level of safety or security which each Person provides for himself and his property. Neither the Coop nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Project, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Project, 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 and understands that the Owner shall be responsible for informing the Owner's tenants and all occupants of the Owner's Lot that the Coop, its Board and committees are not insurers or guarantors of security or safety, and that each Person within the Project assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

5.6. Provision of Services.

The Coop may provide or provide for amenities, services, and/or facilities for the Members and/or their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Persons affiliated with the Coop, to provide such services and facilities. The Board may charge use or service fees for any such amenities, services and/or facilities provided at the option of an Owner, or may include the costs thereof in the Coop's budget as a Common Expense and assess it as part of the Common Assessments if provided to all Lots. By way of example, such services and facilities might include recreational amenities (located at the Project Site or elsewhere), landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar amenities, services and/or facilities.

ARTICLE VI IMPLIED RIGHTS: BOARD AUTHORITY

The Coop may exercise any right or privilege expressly conferred upon it by the Restrictions, or reasonably implied from therefrom, or where reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Restrictions, or by law, all rights and powers of the Coop may be exercised by the Board without a vote of the membership. The Board may institute, defend, settle, or intervene on behalf of the Coop in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters

pertaining to the Common Property or Common Property, enforcement of the Restrictions, or any other civil claim or action. However, the Restrictions shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Coop or its members. In exercising the Coop's rights and powers, making decisions on the Coop's behalf, and conducting the Coop's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

ARTICLE VII INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Subject to Hawaii law, the Coop shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such Person may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles, and Hawaii law. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Coop, except to the extent that such officers or directors may also be Members of the Coop. The Coop shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. As a Common Expense, the Coop shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE VIII FUNDS AND ASSESSMENTS

8.1. Obligation and Declarant's Option to Fund Budget Deficits.

The Coop for each Agricultural Lot owned by the Coop which is subject to Assessment, hereby covenants and every other Owner of any Lot, by acceptance of a Proprietary Lot Lease or other conveyance therefor, whether or not it shall be so expressed in such Proprietary Lot Lease or such other instrument, is deemed to covenant to pay to the Coop (i) annual Common Assessments for Common Expenses; (ii) Capital Improvement Assessments; (iii) Special Assessments; and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All Assessments other than Special Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The personal obligation of assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them. Until the Declarant Control Period Termination Date, the Coop may satisfy its obligation, if any, for Common Assessments by paying such assessments in the same manner as any other Owner, or by paying the difference between the amount of Common Assessments levied on all other Owners subject to assessment and the amount of actual

expenditures by the Association during the fiscal year. The Coop's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After the Declarant Control Period Termination Date, the Coop shall pay assessments on its Lots in the same manner as any other Owner.

8.2. Coop Funds.

The Board shall cause appropriate financial statements and budgets, including reserve and operating funds to be prepared as provided in the Coop Bylaws.

8.3. Disbursements.

All disbursements shall be made as provided in the Coop Bylaws.

8.4. Common Property Damage or Neglect.

If any maintenance, repair or replacement of the Common Property is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of an Owner or Owner Parties, such maintenance, repairs or replacements shall be performed, to the extent not covered by insurance, at the expense of the applicable Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Owner; provided, however, that the liability of an individual Owner for such damage to the Common Property shall not be absolute, but shall only be that for which the Owner is legally responsible under Hawaii law. The foregoing shall include, without limitation, any settlement damage to any Common Property caused by any excavation, construction or excess irrigation occurring on such adjacent Lot, or Common Property.

8.5. Common Assessments.

Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners and their Lots as provided in the Coop Bylaws.

8.6. Commencement of Common Assessments.

Common Assessments shall commence as to each Lot on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot; provided, however, at the Coop's election, the commencement of Common Assessments may be delayed to a date specified for the commencement of Assessments in any written notice provided by the Coop. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year established pursuant to the Bylaws.

8.7. Remedies of the Coop.

Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment, or Reconstruction Assessment not paid by an Owner will be subject to the remedies provided in the Coop Bylaws.

8.8. Lien for Assessments.

The Coop shall have a lien to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Hawaii law), and costs of collection (including court costs and attorneys fees) as provided in the Coop Bylaws. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any Recorded First Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) on a Proprietary Lot Lease made in good faith and for value and recorded prior to the recordation of the Notice of Lien by the Coop. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

8.9. Notice of Lien.

No action may be brought to enforce any Assessment lien herein, unless at least thirty (30) days have expired following the date a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been Recorded by the Coop. The Notice of Lien shall be in such form and shall contain such information as may be required by Hawaii law and must be signed and acknowledged by an officer of the Coop or such other Person expressly authorized by the Board to sign Notices of Liens. The lien shall continue until fully paid or otherwise satisfied.

8.10. Curing of Default.

Upon the timely curing of any default for which the Coop filed a Notice of Lien, the Coop shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any officer of the Coop, or such other person expressly authorized by the Board, stating the indebtedness secured by the liens upon any Lot created hereunder, shall be conclusive upon the Coop and the Owners as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

8.11. Cumulative Remedies.

The Assessment lien and the rights of foreclosure and sale thereunder are in addition to and not in substitution for all other rights and remedies which the Coop and its assigns may have against any delinquent Owner hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

8.12. Mortgage Protection - Liens.

Subject to Section 8.13 below, no lien created under this Article VIII, nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto defeats or renders invalid the rights of the Mortgagee under any Recorded Mortgage upon a Lot, made in good faith and for value. After a Mortgagee or other Person obtains title to a Lot by judicial foreclosure or by means of a power of sale set forth in such Mortgage, the Lot shall

remain subject to the Restrictions and the payment of all installments of Assessments and other obligations, accruing after the date the Mortgagee or other Person obtains title.

8.13. **Priority of Assessment Lien.**

Mortgages Recorded before Recordation of a Notice of Lien have lien priority over the Notice of Lien. The sale or transfer (including any "assignment of Proprietary Lot Lease in lieu" of foreclosure) of any Lot does not affect the Assessment lien; except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Lien extinguishes the lien of such Assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot from lien rights for any Assessments thereafter becoming due. No Person who obtains title to a Lot through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person.

ARTICLE IX SPECIFIC REGULATORY USE RESTRICTIONS AND REQUIREMENTS

The following specific use restrictions and requirements apply, without exception, to the Coop, all Owners and all other Persons.

9.1. **Historic Preservation Plan.**

A *heiau* exists on a portion of the Project Site. Heiau and other such historic sites may be designated in the Historic Preservation Plan for mandatory preservation ("**Preservation Site**"). Other Identified Sites may be designated for data recovery ("**Data Recovery Sites**"). A survey has been conducted of the Project Site in a reasonable effort to identify all Historical Sites on the Project Site as reflected in the Historic Preservation Plan. Historical Sites may exist on the Project Site that have not been identified ("**Undiscovered Sites**"). Historical Sites may impact the manner in which an Owner may improve or use his or her Lot. The Preservation Site shall not be disturbed or removed. The Coop shall be obligated to protect and preserve the Preservation Site as required by the State of Hawaii Department of Land and Natural Resources regulations at the time this Declaration is recorded. The cost of maintaining such protection and preservation measures shall be a Common Expense of the Coop. Data Recovery Sites may be disturbed or disrupted only after data recovery activities have been completed. Historic Sites to be preserved that are identified are shown on each Lot's Farmsite Diagram as a buffer zone and all Owners, lessees and all other persons shall not disturb the land within such buffer zones for any purposes whatsoever.

9.2. **Preservation Requirements.**

Prior to undertaking any Improvements, including grading, clearing or planting on a Lot, the Owner of the Lot shall take into account any Historic Site on the Lot when designing and constructing Improvements or planting crops on the Lot. In the event that any Historic Site exists on the Lot, the Owner shall avoid disruption of the site. Under no circumstances may any

Owner or Member, or their licensees, guests, invitees, agents, employees, contractors, representatives, or any other Person deposit construction waste, refuse, or any other material on or in any Preservation Site, damage, disrupt, or destroy a Preservation Site, or remove material of any kind from a Preservation Site.

9.3. Undiscovered Sites Including Undiscovered Burials.

In the event an Owner discovers the existence of an Undiscovered Historic Site after commencing construction of an Improvement, or clearing, grading or planting the Lot, the Owner shall cease such activities or construction and notify the Coop immediately of the existence and location of the Undiscovered Site. The Owner shall then grant the Coop, its agents, employees, and any governmental officials and inspectors access to the site to conduct any required evaluation, testing, data recovery, preservation, and mitigation that may be required by Ordinance, the State of Hawaii Department of Land and Natural Resources regulations as of the date this Declaration is recorded, or Hawaii law. The Coop does not give any warranty, or make any representation, that all Historical Sites that exist within the Project have been discovered. Undiscovered Sites may affect the manner in which Lots within the Project may be used. The Coop shall have no liability for any damages, increased construction or operating costs, or delays caused by the existence of, or the discovery of, a Historical Site.

**ARTICLE X
GENERAL USE RESTRICTIONS AND REQUIREMENTS**

The provisions of this Article X do not apply to the Coop during subdivision or development activities or any Improvements they construct, but this Article X will apply to any alteration, reconstruction or repair of such Improvements by Owners.

10.1. Agricultural Use.

All Lots shall be improved and used solely for agricultural use, including animal husbandry. This provision does not preclude any Owner in the Project Site from renting or leasing for agricultural use purposes all of his or her Lot in accordance with Section 10.7 below.

10.2. Improvements.

No Lot may be improved except with a Building or structure designed to support the agricultural activities as approved by the County.

10.3. Insurance Rates.

Nothing shall be done or kept in the Project Site which will increase the rate of insurance on any Lot, Common Property or other portion of the Project Site without the approval of the Board, nor shall anything be done or kept in the Project Site which would result in the cancellation of insurance on any Lot, Common Property or other portion of the Project Site or which would be in violation of any law.

10.4. No Further Subdivision.

Except as otherwise provided in Section 20.3.1 hereof, no Lot may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board. Any sublease on a Lot shall provide that the tenant and all occupants of the subleased Lot are bound by and obligated to comply with the Restrictions.

10.5. Signs.

No sign, poster, billboard, balloon advertising device or other display of any kind ("*Displays*") may be displayed within the Project Site except (i) such Displays (regardless of size, configuration or content) as may be used by the Coop in connection with the development of the Project Site and the sale, lease or other disposition of Lots; or (ii) entry monuments and similar community identification signs maintained by the Coop.

10.6. Animals.

No animals, fowl, reptiles, poultry, fish or insects of any kind ("*Animals*") may be raised, bred or kept on any Lot except in compliance with Chapter 205, Hawaii Revised Statutes. So long as the use is in compliance with Chapter 205, Hawaii Revised Statutes, animal husbandry, game and fish propagation, raising of livestock, including poultry, bees, fish or other animal or aquatic life propagated for economic or personal use shall be allowed.

10.7. Nuisances.

No rubbish or debris of any kind may be placed or permitted to accumulate anywhere within the Project Site, and no odor may be permitted to arise therefrom so as to render the Project Site or any portion thereof unsanitary, unsightly, or offensive from any public or private street or road or from any other Lot in the vicinity thereof or to its occupants, subject to what is reasonable for an agricultural subdivision. No noise or other nuisance shall be permitted to exist upon or emanate from any portion of the Common Property or any portion of a Lot or Common Property within the Project Site so as to be offensive or detrimental to any other Lot or Common Property in the Project Site or to its occupants. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes and commercially designed and reasonably used exterior speakers), live bands, noisy, unsightly, unusually painted or smoky vehicles, large noisy power equipment or tools, unlicensed off-road motor vehicles, transmissions which may unreasonably interfere with television or radio reception within the Project Site, or other items which may unreasonably disturb other Owners or their tenants may be located, used or placed on any portion of the Project Site without the prior written approval of the Farmer's Committee. No vehicles may be operated upon any portion of the Common Property not improved as a street or parking area without the prior written approval of the Farmer's Committee, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security and contents of a vehicle, Lot or Common Property, are permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

10.8. Exterior Maintenance and Repair.

No Improvement shall be permitted to fall into disrepair, and each such Improvement must at all times be kept in good condition and repair.

10.9. Drainage.

There shall be no interference with the drainage systems originally installed by the Coop, or alteration or interference with the established drainage pattern over any Lot or Common Property, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, "established" drainage means the drainage pattern and drainage Improvements which exist at the time the Lot or Common Property, as the case may be, is conveyed to the Owner by the Coop. There shall be no violation of the drainage requirements of the applicable Local Governmental Agency or other applicable Local Governmental Agency, notwithstanding any approval by the Farmer's Committee. Each Owner, by accepting a Proprietary Lot Lease to his or her Lot, acknowledges and understands that in connection with the development of the Project Site, the Coop may have installed one or more "subdrains" beneath the surface of such Owner's Lot. The subdrains and all appurtenant Improvements constructed or installed by the Coop ("*Drainage Improvements*"), if any, provide for subterranean drainage of water from and to various portions of the Project Site. To ensure adequate drainage within the Project Site, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, any damage or injury resulting from or arising in connection with the alteration, modification, removal or replacement of any Drainage Improvements on a Lot shall be the responsibility of the Owner of such Lot.

10.10. Water Systems.

No individual water supply system is permitted on any Lot, except crop irrigation systems that connect to the irrigation water that is delivered to the Lot boundaries. No other individual water supply system is permitted on any Common Property.

10.11. No Hazardous Activities.

No activities may be conducted, nor may any Improvements be constructed, anywhere in the Project Site which are or might be unsafe or hazardous to any Person, Lot, or Common Property in the Project Site.

10.12. Unsightly Articles.

At all times refuse, garbage and trash must be kept in covered, sanitary containers designed for such purpose and located within enclosed areas or areas reasonably screened from the view of any other Lot, or Common Property. No exterior fires whatsoever are permitted within the Project Site, except barbecue fires contained within receptacles commercially designed therefor, fire pits in enclosed areas designed so that they do not create a fire hazard, and other fires specifically authorized in writing by the Coop, all of which are also subject to applicable ordinances and fire regulations.

10.13. No Mining or Drilling.

No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted upon the Project Site, nor are oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts permitted upon or within five hundred feet (500') of the surface of any portion of the Project Site.

10.14. Views.

There are no views in the Project Site which are protected to any extent by this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Notwithstanding any other provision of this Declaration, each Owner by accepting a Proprietary Lot Lease to a Lot acknowledges that any construction or installation or planting by the Coop or by other Owners may impair the view of such Owner and each Owner hereby consents to such impairment.

10.15. Rights of Handicapped.

Subject to the provisions of Article XI hereof, each Owner may modify his or her Lot, at his or her sole cost and expense, in order to facilitate access by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with applicable laws or ordinances.

10.16. Damage to Buildings-Reconstruction.

If all or any portion of any Lot or Building is damaged or destroyed by fire or other casualty, the Owner of such Lot or Building shall rebuild, repair or reconstruct the Lot or Building in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Farmer's Committee. The Owner of any damaged Lot or Building and the Farmer's Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Building shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.

10.17. Hazardous Materials.

No hazardous waste, substance or material (as defined in any federal, state or local law, ordinance or regulation) shall be stored or permitted upon any portion of the Project Site, except in compliance with all applicable laws, ordinances and regulations of all applicable public agencies. Without limiting the generality of the foregoing, the Project Site is subject to all federal, state, and local requirements adopted pursuant to the Federal Clean Water Act. In accordance therewith, the Coop, and all Owners may not dispose of any hazardous waste,

substance or material into any storm drain or other drainage device located anywhere within the Project Site in violation of applicable laws, ordinances, or regulations.

ARTICLE XI PROJECT SITE FARM USE CONTROL

11.1. Farmer's Committee.

At the option of the Board, a Farmer's Committee may be appointed and if appointed shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors so long as the Farmer's Committee never consists of greater than five (5) nor fewer than three (3) members. The Farmer's Committee, at the option of the Coop, may be granted jurisdiction over any buildings or improvements to be built on any Lot and may be granted the power and authority to promulgate rules for farming and agricultural activities.

11.2. Compensation of Members.

The Farmer's Committee members shall receive no compensation for services rendered, other than reimbursement by the Coop for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Farmer's Committee or the Farmer's Committee Representative or to perform the function of the Farmer's Committee Representative.

11.3. Limitation of Liability.

The Coop, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work, or any defects in plans revised or approved hereunder; any loss damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the Farmer's Committee, and the members of each shall be defended and indemnified by the Coop as provided in Article VII.

ARTICLE XII DESTRUCTION OR CONDEMNATION OF COMMON PROPERTY

Damage to, destruction or condemnation of all or any portion of the Common Property shall be handled in the following manner:

12.1. Damages by Owners.

To the extent permitted by law, each Owner is liable to the Coop for any damage to the Common Property not fully reimbursed to the Coop by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Owner, his or her family, guests, tenants or invitees, or any other Persons deriving their right and

easement of use and enjoyment of the Common Property from the Owner or its Owner Parties. However, the Coop, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Coop, and after Notice and Hearing the Coop may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners is joint and several, except to the extent that the Coop has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Coop by insurance, shall be a Special Assessment.

12.2. Repair of Damages.

If Common Property Improvements which are the maintenance responsibility of the Coop are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Coop, which thereupon shall contract for the repair or replacement of all the Common Property Improvements so damaged. The Coop shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from. Any restoration or repair of the Common Property Improvements after damage due to an insurable hazard will be performed substantially in accordance with the original plans and specifications unless other action is approved as may be provided herein.

12.3. Condemnation.

If all or any portion of the Common Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Coop and deposited in the appropriate operating fund. No Member (other than a Person on whose Lot a Common Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Coop has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

12.4. Notice to Owners and Listed Mortgagees.

The Board of Directors immediately upon learning of any taking by eminent domain of any Common Property, or any threat thereof, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Common Property, and all Record holders of first Mortgages on such Owners' Lots. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Common Property, and all holders, insurers, and guarantors of first Mortgages on Lots who have filed a written request for such notice.

**ARTICLE XIII
DECLARANT EXEMPTION**

13.1. Interest of the Coop.

The Coop in cooperation with the applicable Local Governmental Agency, has created a comprehensive plan for the development of the Project for the common good and promotion of agricultural uses of the property and the preservation of property values within the community. Each Owner of a Lot which is part of the Project Site acknowledges by acceptance of a Proprietary Lot Lease or other conveyance therefore, whether or not it shall be so expressed in any such Proprietary Lot Lease or other instrument, that the Coop has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration.

13.2. Exemptions.

Nothing in the Restrictions limits and no Owner will interfere with the right of the Coop, either directly or through their respective agents and representatives, to subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Project Site, or the right of the Coop to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Project Site owned by the Coop.

**ARTICLE XIV
INSURANCE**

The Coop acting through the Board or its duly appointed agent shall obtain and maintain insurance of the types and in the amounts described below, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available. Using 2010 as a base year, the Board may adjust the limits specified based on increases in the U.S. consumer price index or other reasonable inflation index as selected by the Board.

14.1. Commercial General and Umbrella Liability Insurance.

The Board shall maintain commercial general liability insurance (“*CGL*”) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 each occurrence and in the aggregate.

14.1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) in connection with the Coop’s activities or with respect to the Common Property.

14.1.2 Each Owner, the Board, and the Coop Manager shall be included as an insured under the CGL, using the applicable ISO additional insured endorsement providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as

primary insurance and there shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

14.1.3 Insurance coverage for liability arising from pollution or employment-related practices that the Board, in its business judgment, determines to be appropriate and available, shall be obtained.

14.2. Automobile and Umbrella Liability Insurance.

The Board shall maintain automobile liability insurance for Coop owned vehicles and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000.00 per accident.

14.2.1 Such insurance shall cover liability arising out of any automobile accident (including owned, hired, and non-owned automobile).

14.2.2 Coverage as required in Section 14.2 above shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

14.2.3 Pollution liability coverage at least as broad as that provided under the ISO pollution liability such as broadened coverage for covered automobiles endorsement (CA 99 48) shall be provided and the Motor Carrier Act endorsement (MCS 90) shall be attached.

14.2.4 Physical damage coverage shall include collision and comprehensive coverage with respect to the leased automobile with deductibles of no more than \$1,000.00.

14.3. Coop Agents.

14.3.1 Directors and officers liability coverage shall be obtained and provided.

14.3.2 Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Coop funds in an amount determined in the Board's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation.

14.4. Commercial Property Insurance.

Commercial property insurance shall be provided, which covers the Improvements installed by the Coop on the Common Property for the full replacement cost thereof without deduction for depreciation or coinsurance, and the Board may obtain insurance against such other hazards and casualties as the Coop may deem desirable.

14.4.1 Commercial property insurance shall be provided, which at minimum, covers the perils insured under the ISO special causes of loss form (CP 10 30), if commercially

reasonably available; if not commercially reasonably available, then the broad causes of loss form (CP 10 20) may be substituted.

14.4.2 Flood coverage may be provided, at the discretion of the Board, with a limit as close to the full replacement cost of the Improvements as is reasonably available. This requirement is subject to annual review and modification in recognition of changes in the insurance marketplace.

14.4.3 Earthquake coverage may be provided, at the discretion of the Board, with a limit as close to the full replacement cost of the Improvements as is reasonably available.

14.4.4 Hurricane coverage may be provided, at the discretion of the Board, to the extent commercially reasonably available.

14.4.5 The amount insured shall equal the full estimated replacement cost of the property insured except as provided in Subsections 14.4.2 and 14.4.3 with respect to flood and earthquake coverage.

14.4.6 Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

14.5. **Other Insurance.**

Such additional insurance, such as worker's compensation insurance and employer's liability insurance that the Board, in its business judgment, determines to be appropriate and available, or as required by law, shall be provided.

14.6. **General Insurance Provisions.**

All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in Hawaii which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the Coop's name as trustee for the benefitted parties; policies on the Common Property shall be for the benefit of the Coop and its Members;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

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

(f) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Property as a Member in the Coop (provided, this provision shall not be construed as giving an Owner any interest in the Common Property other than that of a Member);

(g) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Coop to cure the defect or violation and allowance of a reasonable time to cure; and

(i) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Coop.

14.7. Additional Insurance Provisions.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Coop's Board, officers, employees, manager, the Owners and their tenants, servants, agents, and guests;

(b) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least thirty (30) days' prior written notice to the Coop of any cancellation, substantial modification, or non-renewal;

(e) a cross-liability provision; and a provision vesting in the Board exclusive authority to adjust losses; provided that no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

14.8. Other Property.

The Coop may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Coop may deem desirable, with the Coop as the owner and beneficiary of such insurance. The policies insuring the Common Property must be written in the name of, and the proceeds thereof must be payable to the Coop. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Coop shall keep a record of all claims made and shall use

insurance proceeds to repair or replace the property for which the insurance was carried. Costs incurred for premiums for all insurance carried by Coop shall be a Common Expense.

14.9. Insurance Obligations of Owners.

Each Owner is responsible for insuring his or her personal property and all other property and Improvements within his or her Lot as required by this Declaration or the applicable Supplemental Declaration. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Coop, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Coop occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Coop, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

14.10. Waiver of Subrogation.

All policies of physical damage insurance the Coop maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Coop; (iii) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Coop, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured; (iv) any rights of the insurer to repair, rebuild or replace, and, if any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Coop or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Coop's control. As to each policy of insurance the Coop maintains which will not be voided or impaired thereby, the Coop hereby waives and releases all claims against the Board, the Owners, the Coop Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**ARTICLE XV
EASEMENTS**

15.1. Easements in Common Property.

The Coop grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Property, subject to:

- (a) The Restrictions and any other applicable covenants;
- (b) Any restrictions or limitations contained in any lease or other document conveying or granting such real property or interest in real property to a third-party;

- (c) Those limitations set forth in Section 3.1 of this Declaration; and
- (d) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Property, including rules limiting the number of guests who may use the Common Property;
 - (ii) suspend the right of an Owner to use facilities within the Common Property (A) for any period during which any charge against such Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Restrictions after notice and a hearing pursuant to the Bylaws;
 - (iii) dedicate or transfer all or any part of the Common Property, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational or storage facility situated upon the Common Property;
 - (v) permit use of any recreational facilities situated on the Common Property by Persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Property as open for the use and enjoyment of the public; and
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend the Owner's right of use and enjoyment to the members of the Owner's family, lessees, and guests, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of such lease.

15.2. Easements of Encroachment.

The Coop grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Property and between adjacent Lots due to the unintentional placement or settling or shilling of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

15.3. Easements for Utilities and Infrastructure Development.

15.3.1 Installation and Maintenance. The Coop reserves for itself the following described rights and the right to grant to any governmental entity, third-party or utility providers (including, but not limited to, privately owned and operated utilities), perpetual non-exclusive easements throughout the Project (but not through a structure) to the extent reasonably necessary, for the purpose of:

(a) installing utilities and infrastructure to serve areas within or within the vicinity of the Project Site, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which the Coop owns or within public rights-of-way or easements reserved for such purpose on Recorded plats, including without limitation the development of water resources, and the installation and maintenance of facilities and equipment to capture, treat and transport ground water, surface water and storm water runoff;

(b) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements described in Subsection 15.3.1(a); and

(c) access to read utility meters.

15.3.2 Specific Easements. The Coop also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the Coop's sole discretion, in connection with the orderly development of any property within the Project Site. The Owner of any property to be burdened by any easement granted pursuant to this Section 15.3 shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

15.3.3 Minimal Interference. All work associated with the exercise of the easements described in Subsections 15.3.1 and 15.3.2 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. Exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

15.4. Easements for Maintenance, Emergency and Enforcement.

The Coop reserves easements over each Lot, including, but not limited to, the Coop Easements as may be designated on the Plat Map, for access to and from and to construct, repair, maintain and replace wells and reservoirs, utility lines and facilities and over the Project as necessary to enable the Coop to fulfill its maintenance responsibilities under Article III. The Coop shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Restrictions. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after forty-eight (48) hours prior notice to the Owner. The Coop reserves for itself and others, and may designate, the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Project Site, including Lots, and a perpetual, nonexclusive easement of access throughout the Project Site to the extent reasonably necessary to exercise such right. Except in an emergency, no entry into a Building shall be permitted without the Owner's consent, and entry onto a Lot shall occur only after reasonable notice to the Owner.

15.5. Easements for Historical Sites and Cultural Practices.

The Coop reserves for itself a nonexclusive, perpetual easement over the Project Site, including the Lots, to (i) travel to and from the Historical Sites; and (ii) inspect, evaluate, perform data recovery, maintain and preserve the Historical Sites identified on the Project Site from time to time. Such easement shall affect only such portions of the Common Property and Lots as the Coop deems reasonably necessary for such purposes. The Coop further reserves the right to designate and grant nonexclusive easements over the Common Property and Lots to (i) travel to and from such Historical Sites; (ii) inspect, evaluate, perform data recovery, maintain and preserve such Historical Sites; and/or (iii) perform traditional, cultural and/or religious practices at such Historical Sites. Such easements shall affect only such portions of the Common Property and Lots as the Coop deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions and restrictions that the Coop may impose, consistent with Hawaii law.

15.6. Easement for Drainage.

The Project Site is burdened with a perpetual and nonexclusive easement over, through, and across the Project Site as necessary to accommodate drainage from or across the Project Site in its currently existing and natural pattern and flow. No Owner shall erect any structure or obstruction that interrupts the existing and normal drainage of the land. Each Owner assumes all liability for damage to persons or Project Site caused by interference with the natural flow of drainage from, over, through, or across the Lot in connection with Owner's activities on all or any part of the Lot, and agrees to indemnify, defend, and hold harmless the Coop from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

15.7. Coop Easement.

The Coop reserves the nonexclusive right and easement to the portion of each Lot that is designated a Coop Easement for the purposes of constructing, installing, maintaining and repairing wells, reservoirs, utilities, widening roads, installing structures and Improvements, installing and maintaining landscaping and windbreaks, and any other reasonable purpose as may be determined in the discretion of Coop. No Owner may remove, damage, or destroy any Improvement, structure, landscaping, plants, or trees that are within the Coop Easement unless given express, written consent by the Board of Directors. Any Owner that constructs any Improvement or installs any landscaping or crops on a portion of his or her Lot that is designated as Coop Easement shall be required, upon notice from the Board, to remove such Improvement

or landscaping or crops at such Owner's expense and restore the Coop Easement to substantially the same condition as existed prior to the construction or installation of such Improvement or landscaping. In the event an Owner fails to take such action as required by the Board, the Coop shall have the right to remove such landscaping or Improvement or crops and restore the Coop Easement, without liability to the Owner. The costs for such action may be levied against such Owner's Lot as a Specific Assessment.

ARTICLE XVI WATER SYSTEM

16.1. Design and Construction.

The Project is dependent on the availability of irrigation water from the Kunia Water Association established pursuant to that certain Amended and Restated Declaration of Covenants Regarding Water Allocation and Easements more particularly described in Exhibit A attached hereto (the "*KWA Declaration*"). The Kunia Water Association intends to allocate and distribute irrigation water as provided in the KWA Declaration. The Coop shall construct the Project Site water distribution system which shall consist of a water system (the "*Water System*") for the purpose of providing irrigation and non potable water for service within the Project. The water system will be designed to provide water for the Coop and individual Owners. All of the initial components of the water system relating to water service to the Project, including all wells, lines, pumps, reservoirs, water towers or tanks, and other facilities and appurtenances serving the Project developed or to be developed by the Coop have been or will be paid for, constructed, and installed by the Coop. Owners are required to utilize the water system.

16.2. Ownership and Operation of the Water System.

The Coop will own, operate, maintain and repair the facilities constituting the Water System. The costs of development of the Water System will be included in the price of the Lots and not in the water usage charges and other costs charged by the Coop.

16.3. Access to Water System and Rates for Service.

If the Kunia Water Association delivers water to the Project for further distribution to the Lots, then water service shall be provided by the Coop to Owners and the Variable Operating Costs (as defined in the KWA Declaration) charged by the Kunia Water Association to the Project shall be allocated among and shall be paid by the Owners in direct proportion to the usage by the individual Lots. Fixed Operating Costs and Capital Recovery Costs (as defined in the KWA Declaration) charged by the Kunia Water Association shall be allocated among and paid by the Owners in accordance with their percent interests.

16.4. Maintenance and Repair of the Water System.

Upon satisfaction of the conditions described in Section 16.1 above and the development of the Water System by the Coop, the Coop shall be obligated to maintain and repair the Water System. The costs associated with maintenance and repair of the Water System will be recovered by the Coop from the Owners in accordance with their percent interests. To complete the required maintenance and repair of the Water System, the Coop, shall be granted easements as provided

in Article XV over, under, and across the Project Site to the extent necessary to conduct such maintenance and repair. Such easements shall include a right of ingress and egress over Common Property, roads, easements and Lots as reasonably necessary.

16.5. Limitations on Water Usage.

The availability of water and the amount of available water is dependent on water provided by the Kunia Water Association.

**ARTICLE XVII
WASTEWATER TREATMENT SYSTEM**

There is no wastewater treatment system and each Owner shall be responsible for the installation of an individual waste water system in accordance with the requirements and regulations of the Hawaii State Department of Health and shall be subject to the County permitting requirements and any requirements imposed by the Board and/or the Coop.

**ARTICLE XVIII
DISCLOSURES**

18.1. Ongoing Construction and Sales Activities.

Construction activity by the Coop or other Lot Owners may continue within the Project and within the vicinity of the Project. Such construction activity may result in the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations, and other annoyances, as well as pose certain risks of injury to an Owner and the Owner's guests and visitors, and may limit the Owner's access to portions of the Project. Additionally, the Coop's sales activities, including the use of signs and sales displays and activities, will continue in the Project until the sale of the last Lot in the Project.

The Coop shall have an easement over and upon each Owner's Lot and over the Project for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over the Project which are created by or result from such construction activities. The Coop may perform such measures as may be reasonably required in connection with such construction activities, including, but not limited to, grading; excavation; depositing fill material; installing drainage systems; and installing sewer, water, electrical, gas, telephone, and/or television cable lines..

18.2. Hazardous Materials.

Each Owner assumes all risks of Hazardous Materials (as used herein, the term "***Hazardous Materials***" means all substances identified, listed, or defined as a "hazardous substance" under any federal, state or local environmental laws or otherwise regulated as a dangerous, hazardous, toxic, or carcinogenic substance) existing on, about, around, under, over, or within the Owner's Lot, including all risks of (i) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials Law affecting the

Lot; (ii) all claims made or threatened by any third party against an Owner or the Coop relating to damage, contribution, compensation, loss, or injury resulting from any Hazardous Materials; and (iii) having sole responsibility for, and defending, indemnifying, and holding harmless the Coop and its officers, directors, employees, agents, successors, and assigns (each of said parties herein called an “*Indemnitee*”), from and against all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys’ fees and costs) which may arise out of or may directly or indirectly be attributable to the use, generation, manufacture, treatment, handling, refining, production, storage release, discharge, disposal, or presence of any Hazardous Materials on, about, around, over, or within the Lot or the Project Site. This indemnification shall not apply to claims, demands, actions, losses, damages, liabilities, costs, and expenses caused by any Indemnitee’s proven gross negligence, willful misconduct, or violation of applicable laws, established by a final, nonappealable judgment of a court of competent jurisdiction. This provision shall not apply to any institutional lender, investor, or federal housing agency (including any successors or assigns) who holds a Mortgage covering the Lot or who takes title to the Lot upon foreclosure or by way of assignment of proprietary lot lease in lieu of foreclosure or otherwise.

18.3. Impacts on Lot.

Each Lot and the Improvements thereon, may be affected periodically by various hazards and by noise, dust, smoke, earthshock, soot, ash, odor, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions created by or attributable to surrounding farming, construction, development, pasture, and other non-residential uses and activities, including, but not limited to:

- (a) fertilization and pest and weed control;
- (b) cattle and other livestock grazing;
- (c) real estate development and other changes in use (due to zoning changes or other governmental authorization or otherwise), construction, grading, improvement and maintenance of adjacent and surrounding Project Site, including roadways;
- (d) irrigation of any and all surrounding lands with reclaimed water, treated effluent, or other non-potable water sources; and
- (e) Portions of the Project being designated as a critical habitat under the federal Endangered Species Act and being subject to regulation by the U.S. Fish and Wildlife Service.

18.4. View Impairment.

The activities conducted on the Project Site pursuant to Article V and Article X may diminish or impair views within the Project Site. There are no express or implied view easements. Therefore, views within the Project are not protected, and any negative impact to any Owner’s view caused by such activities shall not provide a basis for any claim or right of action. Trees

and landscaping need not be pruned, and may be relocated. There is no express or implied easements for view or for passage of light and air.

18.5. Roadways.

The roadways located in the Project Site are private roadways and the Coop shall be responsible for the maintenance and repair of the roadways unless and until such roadways may be dedicated to the County or other governmental agency; however, there currently is no plan to dedicate the roadways to any governmental agency. The Coop reserves the right to grant non-exclusive easements over and upon the roadways to any governmental agency, utility provider, adjacent landowner or any other person or entity. These roadways and access rights thereon will inure to the benefit of all Owners and occupants of the Project Site as set forth in Section 3.1 Owners' Rights of Enjoyment.

18.6. Wells and Irrigation Systems.

No Owner or Member may construct, drill, install, or maintain any wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Project, except that the Coop shall have the right to draw water from such sources.

ARTICLE XIX DISPUTE RESOLUTION

19.1. Dispute Resolution.

All disputes involving (i) the Coop and/or (ii) any "Declarant Parties" (defined below) which arise out of, or relate to, the Restrictions (excluding any action for delinquent Assessments) or which relate to the Project Site, shall be resolved as provided in this Section. For purposes of this Section, the term "**Declarant Parties**" means and collectively refers to the Coop, its members, officers, directors and each of their respective members, managers, shareholders, directors, officers and employees, and the term "**Declarant Party**" refers to any of the foregoing individually. The dispute resolution procedure in this Article XIX shall control all disputes involving the Coop and/or other Declarant Parties.

(a) **Construction Defect Disputes.** Prior to the commencement of any legal action by the Coop, or any Owner(s) against the Coop or any other Declarant Party based upon a claim for defects in the design or construction of any Building, Common Property or Improvements thereon, the Coop, or Owner must first comply with the requirements of the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes, as amended. If the parties are unable to resolve their dispute, the dispute shall be resolved in accordance with Section 19.2 below and the parties shall each be responsible for their own attorneys' fees, expert witness fees and similar or related costs and fees.

(b) **Other Disputes.** Any other disputes involving (a) the Coop and/or (b) any Declarant Parties which arise out of, or relate to, the Restrictions (excluding any action for delinquent Assessments) or which relate to the Project Site shall be resolved in accordance with Sections 19.2 and 19.4 below.

(c) **Statutes of Limitations.** Nothing in this Article XIX shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that the Coop, the Declarant Parties, and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 19.1.

19.2. AGREEMENT REGARDING DISPUTE RESOLUTION; WAIVER OF JURY TRIAL.

THE COOP AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE XIX TO RESOLVE ALL DISPUTES WHICH ARE COVERED UNDER THIS ARTICLE XIX AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. THE COOP AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XIX THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS ARTICLE XIX MAY NOT BE AMENDED WITHOUT THE COOP'S PRIOR WRITTEN CONSENT.

19.3. WAIVER OF PUNITIVE DAMAGES.

BY ACCEPTANCE OF A PROPRIETARY LOT LEASE OR OTHER CONVEYANCE OF A LOT, OR COMMON PROPERTY, EACH OWNER AND THE COOP SHALL BE DEEMED TO HAVE WAIVED, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL RIGHT TO RECOVER PUNITIVE OR OTHER EXEMPLARY DAMAGES FROM AND ANY OR ALL DECLARANT PARTIES.

19.4. Resolution Procedures.

19.4.1 **Notice of Claim.** Any party asserting a Claim ("*Claimant*") against another party ("*Respondent*") shall give written notice (the "*Notice of Claim*") to each Respondent and to the Board stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (b) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (c) the Claimant's proposed resolution or remedy; and

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

19.4.2 Negotiation. The Claimant and Respondent shall make every reasonable effort 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.

19.4.3 Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice of Claim (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Coop (if the Coop is a party to the Claim) or to an independent agency providing dispute resolution services in Hawaii. If the Claimant does not submit the Claim to mediation within such time, or does not appear for 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, 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 party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

19.4.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by each of 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 again comply 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 noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

19.4.5 Initiation of Litigation by Coop. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Coop shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Members entitled to cast 75% of the total votes in the Coop, except that no such approval shall be required for actions or proceedings:

- (a) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (b) initiated to challenge property taxation or condemnation proceedings;

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Coop or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE XX MISCELLANEOUS

20.1. Term and Termination

This Declaration shall continue in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 20.2 is recorded.

20.2. Amendments.

20.2.1 By the Board. Notwithstanding any other provision herein to the contrary, including without limitation, any requirement for approvals by other parties, during the Declarant Control Period, this Declaration may be amended or terminated unilaterally by the Board in its sole discretion by Recording a written instrument signed by the Board setting forth such amendment or termination. Notwithstanding any other provisions of this Declaration, for so long as the Coop owns any portion of the Project Site, the Board may unilaterally amend this Declaration (i) to conform this Declaration to the requirements of the County, City, State or any other governmental agency or entity then in effect or to otherwise comply with or implement any state, federal or local law, regulation or ordinance (ii) to correct typographical or inadvertent errors and (iii) to update or supplement the disclosures contained in Section 20.9 below.

20.2.2 By Owners. The provisions of this Declaration may be amended by Recording an instrument, signed and acknowledged by two (2) officers of the Coop, setting forth the amendment and certifying that such amendment has been approved by Owners representing seventy-five percent (75%) of the voting power of the Coop and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. This Declaration may be amended by a Declarant First Mortgagee, without the joinder of any other person or entity, to partially terminate this Declaration as to any Lots owned by the Declarant First Mortgagee and to withdraw such Declarant First Mortgagee owned Lots from this Declaration. Such amendment and partial termination and withdrawal shall not affect any Lots not subject to the lien of the Declarant First Mortgage. Amendments shall be effective upon Recordation.

20.2.3 Approval of First Mortgagees. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Coop to notify them of proposed action requiring the

consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Lot pledged as security for the respective first Mortgage:

(a) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to beneficiaries, insurers and guarantors of first Mortgages as provided in Articles VIII, XII, XIII, XIV and XX hereof.

(b) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing after such foreclosure.

(c) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being canceled by forfeiture, or (b) an individual Lot not being separately assessed for tax purposes.

(d) **Insurance and Condemnation.** Any amendment relating to the insurance provisions as set out in Article XIV hereof, or to the application of insurance proceeds as set out in Article XII hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Project Site or partition or subdivision, in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Project Site as a common interest development for reasons other than substantial destruction or condemnation of the Project Site must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Subsection 20.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

20.2.4 Certification. A certificate, signed and sworn to by two (2) officers of the Coop that Owners representing seventy-five percent (75%) of the voting power of the Coop have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires the consent of any of the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the County, and such holders, guarantors or insurers of first Mortgages has been obtained or waived. The Coop shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

20.3. Mortgage Protection-General.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Mortgagee under any Mortgage (or the beneficiary under any Deed of Trust) made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 8.9). After the foreclosure of any such Mortgage (or Deed of Trust) such Lot remains subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

20.3.1 Declarant First Mortgagee Rights. A Declarant First Mortgagee, shall have the right, notwithstanding any provision to the contrary herein, to acquire title to the Lots, to consolidate the Lots that are acquired which consolidation may include the Lots in the Project not acquired and to re-subdivide the acquired Lots as may be determined by such entity in its sole discretion and may seek all governmental approvals to the same; provided, however that any Lots (including any Proprietary Leases for such Lots) that have been released from and are not subject to the lien of the Declarant First Mortgage shall in no event be re-subdivided despite the consolidation.

20.3.2 Notice of Default. Each Mortgagee, insurer and guarantor of a first Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Coop of (i) any condemnation or casualty loss which affects either a material portion of the Project Site or the Lot securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot of any obligation arising pursuant to this Declaration, including without limitation the payment of Assessments or charges owed by the Owner of the Lot securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Coop; and (iv) any proposed action of the Coop which requires consent by a specified percentage of first Mortgagees.

20.3.3 Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot and Recorded prior to a Notice of Lien which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such Mortgagee acquires title to such Lot in accordance with Section 8.13.

20.3.4 Books and Records. All beneficiaries, mortgagees, insurers and guarantors of first Mortgages on Lots, upon written request to the Coop, may examine current copies of the Coop's books, records and financial statements and the Restrictions during normal business hours, and may require the Coop to submit an annual audited financial statement for the preceding fiscal year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the fiscal year.

20.3.5 Mortgage Notices. All beneficiaries, mortgagees, insurers and guarantors of first Mortgages of Lots who have filed a written request with the Coop shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Project Site following a decision of the Owners to assume self-management of the Project Site; (ii) written notice of all meetings of the Owners and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Project Site.

20.3.6 Common Property Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Coop.

20.4. Notices.

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Coop for the purpose of service of such notice. Such address may be changed from time to time by notice in writing to the Coop.

20.5. Interpretation.

20.5.1 Restrictions Construed Together. The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Project Site as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of applicable Local Governmental Agencies. The Restrictions shall be construed and governed by the laws of the State of Hawaii.

20.5.2 Restrictions Severable. Notwithstanding the provisions of Subsection 20.5.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

20.5.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

20.5.4 **Captions.** All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

20.5.5 **Time Periods.** Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

20.6. No Public Right of Dedication.

Nothing in this Declaration is a gift or dedication of all or any part of the Project Site to the public, or for any public use.

20.7. Disclosures.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project Site agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Project Site. Each Owner, by acceptance of a Proprietary Lot Lease or other conveyance of a Lot, whether or not it shall be so expressed in any such lease or other instrument, acknowledges and understands the following:

20.8. No Representations or Warranties; Not an Enhanced Protection Agreement.

No representations or warranties of any kind, express or implied, have been given or made by the Coop or its agents or employees in connection with the Project Site or any portion of the Project Site, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be filed from time to time with any governmental authority.

20.9. Priorities and Inconsistencies.


If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Coop, the terms and provisions of this Declaration shall prevail.

[SIGNATURE ON FOLLOWING PAGE]

The undersigned has executed these presents as of the day and year set forth below.

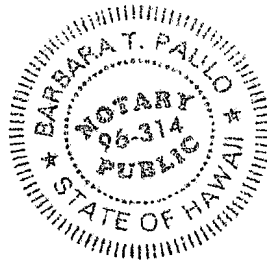
Dated: March 17, 2010

KUNIA LOA RIDGE FARMLANDS,
a Hawaii nonprofit corporation

By: 
Its President, Calvin W. Lui
"COOP" AND "DECLARANT"

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

On this 9th day of March 2010, in the First Circuit of the State of Hawaii, before me personally appeared Calvin W. Lui, to me personally known or proved to be the person whose name is subscribed hereto, who acknowledged executing the foregoing 53 page DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION dated Undated at execution as his ~~or her~~ free act and deed and if applicable in the capacity shown, with due authorization to execute such instrument in such capacity.



Barbara T. Paulo

Name:
Notary Public, State of Hawaii

Barbara T. Paulo

My commission expires: Expiration Date: June 14, 2012

EXHIBIT "A"

DESCRIPTION OF PROJECT SITE

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

LOT M-8-B (area 854.23 acres), as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

BEING all of the land described in and covered by **Certificate of Title No. 975,762** issued to Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation.

SUBJECT, HOWEVER, to the following:

1. Easement "49" (40 feet wide), as shown on Map 10, as set forth by Land Court Order No. 4113, filed August 5, 1940, as amended by Land Court Order No. 17969, filed April 1, 1960, to reduce the width from 40 feet to 30 feet, as shown on Map 23.
 2. Access rights in favor of Lot 17534, over Easement "49", as set forth by Land Court Order No. 172495, filed October 22, 2007.
 3. Trustees Limited Warranty Deed dated November 1, 2006, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, as grantor, and James Campbell Company LLC, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3505988.
 4. Declaration of Site Access; Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676945.
 5. Declaration of Environmental Restrictions (Well Restriction Area); Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676946.
 6. Declaration of Covenants Regarding Water Allocation and Easements dated December 13, 2007, made by James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3694441, as amended and restated by instrument dated August 21, 2008, filed in said Office of the Assistant Registrar as Document No. 3782044, and as further amended by instrument dated February 24, 2010, filed in said Office of the Assistant Registrar as Document No. 3942984.
 7. Grant of Private Waterline Easement dated September 3, 2008, in favor of Syngenta Hawaii, LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3785842.
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8. Grant of Nonexclusive Easement (Access Only) dated December 10, 2008, in favor of Army Hawaii Family Housing LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3812213.

9. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Gill-Olson Joint Venture, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903239, affecting Easement "49".

10. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903245, affecting Easement "49".

11. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903249, affecting Easement "49".

12. Grant of Nonexclusive Easement (Access Only) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903251.

13. Limited Warranty Deed with Covenants, Reservation of Rights and Agreements dated March 17, 2010, by and between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3948038.

14. Grant of Nonexclusive Easement (Access Purposes Only) between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as Grantee, dated March 17, 2010, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3948040.

15. Grant of Nonexclusive Easement (Access and Utility Purposes) between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as Grantee, dated March 17, 2010, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3948039.

16. Unrecorded Assignment and Assumption of Grantee's Rights and Obligations dated as of March 17, 2010 by and between James Campbell Company LLC, as assignor, and Kunia Loa Ridge Farmlands, as assignee, assigning assignor's right, title and interest in and to that certain unrecorded Grant of Nonexclusive Easement (Access Only) dated March 17, 2010 by and between Army Hawaii Family Housing LLC, as grantor, and James Campbell Company LLC, as grantee.

END OF EXHIBIT A