

BY-LAWS

THE POINTE OWNERS ASSOCIATION

ARTICLE I

MEMBERS OF THE CORPORATION

SECTION 1. QUALIFICATION; PROOF OF STATUS; CERTIFICATES

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are an "Owner" of any lot (within The Pointe at Hawaii Loa Ridge Subdivision) as defined in the Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time (herein called the "Declaration"), shall be a member of the corporation, and no person other than such an Owner may be a member of the corporation.

(b) No person shall exercise the rights of membership in the corporation until satisfactory proof has been furnished to the secretary of the corporation that he is an Owner. Such proof may consist of a copy of a duly executed, acknowledged and recorded deed or title insurance policy, or a Transfer Certificate of Title, showing said person to be the owner of a lot (within The Pointe at Hawaii Loa Ridge Subdivision) as defined in the Declaration. Any such deed or policy shall be deemed conclusive in the absence of a conflicting claim based upon a later deed or policy, or a Transfer Certificate of Title.

(c) The Board of Directors of the corporation may provide for the issuance of certificates evidencing membership in the corporation which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be

consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation maintained by its secretary. If any certificate shall become lost, mutilated or destroyed a new certificate may be issued therefor upon such terms and conditions as the Board may direct.

SECTION 2. VOTING RIGHTS; PROXIES

(a) At any meeting of the members of the corporation, each member shall be entitled to cast the number of votes to which he is entitled pursuant to the provisions set forth in Article Ninth of the Articles of Incorporation of the corporation.

(b) Any member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the member and filed with the secretary of the corporation. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. It shall be deemed revoked when the secretary shall receive actual notice of the death or judicially declared incompetence of such member, or upon termination of such member's status as an Owner. Where two or more persons constitute a member, any proxy with respect to the vote of such member shall be signed by all such persons. All such persons may attend meetings, but no vote of such member shall be cast without the unanimous consent of all such persons present at a given meeting.

SECTION 3. MEETINGS; NOTICE; QUORUM

(a) An annual meeting of the members of the corporation shall be held each year on such date and at such time in the months of January, February or March, and at such place in the City and County of Honolulu, State of Hawaii, as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting.

(b) Special meetings of the members of the corporation may be held at such time and at such place in the City and County of Honolulu, State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board of Directors or by a writing filed with the secretary signed by the president, or by a majority of the directors, or by ten percent in voting interest of the entire membership of the corporation.

(c) Except where and to the extent otherwise required by law, the Articles of Incorporation or the Declaration, notice of each meeting of the members of the corporation, specifying the day and time and place of the meeting and the purposes for which the meeting is called, and specifying whether it is an annual or special meeting, shall be given by or under direction of the secretary to each member of the corporation at least two days before the date fixed for such meeting, by advising him in writing or by word of mouth of the meeting at his residence address as it appears on the books of the corporation or his usual place of

business, or by mailing written notice of the meeting postage prepaid addressed to him at his said residence address or usual place of business. In case of the death, absence, incapacity or refusal of the secretary, such notice may be given by a person designated either by the secretary or by the person or persons calling the meeting or by the Board of Directors. If notice is given pursuant to the provisions of these By-Laws, nonreceipt of actual notice of any meeting by any member of the corporation shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. No notice of any meeting need be given to any member of the corporation who at the time of the meeting is absent from the State of Hawaii. Any member of the corporation may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to him. The presence of any member of the corporation at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

(d) At any meeting of the members of the corporation, the presence in person or by proxy of members having a majority of the total votes of all members of the corporation or, provided that not less than ten days' notice was given of the meeting and Class A members entitled to cast not less than 10 votes or a majority of the total Class A members are present in person or by proxy, then those so present shall constitute a quorum, but whether a quorum be present or not, a majority vote of the members present may adjourn any meeting from time to time, and the meeting may be held as

adjourned without further notice. When a quorum is present at any meeting, the concurring vote of members having a majority of the votes of the members constituting a quorum shall be valid and binding upon the corporation except as otherwise provided by law, the Articles of Incorporation, the Declaration, or these By-Laws.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. NUMBER; ELECTION; TENURE; VACANCIES

(a) There shall be a Board of Directors of the corporation of not less than three or more than nine members, and until the members of the corporation shall otherwise determine, the Board of Directors shall consist of three members. Subject to the foregoing limitations, the number of directors shall be fixed each year by the members of the corporation at their annual meeting, provided that the number of directors may be decreased or increased subject to the foregoing limitations and if increased the additional directors may be elected by the members at any special meeting called for such purpose. No member of the Board of Directors need be a member of the corporation.

(b) The directors shall hold office until the first annual meeting of the members of the corporation, at which time the successor directors shall be elected for a term of one year. All directors shall have equal powers. Nothing contained herein shall be deemed to restrict the power of the members or of the Board of Directors to remove a director for cause.

(c) Vacancies on the Board may be filled by a majority of the remaining directors though less than a quorum, and each director so elected shall hold office until his successor is elected by the members. Upon tender of a resignation by a director, the Board shall have the power to elect his successor to take office at such time as the resignation becomes effective.

SECTION 2. MEETINGS; NOTICE; QUORUM

(a) An annual meeting of the Board of Directors shall be held each year immediately after the annual meeting of the members of the corporation and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board of Directors, other than annual meetings, shall be held on such day or days and at such time or times and at such place or places in the City and County of Honolulu, State of Hawaii, as shall be determined from time to time by the Board of Directors, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board of Directors may be called by any officer of the corporation or by any three members of the Board of Directors, and any such meeting shall be held on such day, at such time and at such place in the City and County of Honolulu, State of Hawaii, as shall be specified by the person or persons calling the meeting.

(b) Notice of each special meeting of the Board of Directors, specifying the day and time and place of the meeting shall be given by or under direction of the secretary or by a person calling the meeting to each member of the Board of

Directors, by advising him in writing or by word of mouth of the meeting, or by leaving written or oral notice of the meeting at his residence or usual place of business, or by mailing written notice of the meeting postage prepaid addressed to him at his residence or usual place of business. Nonreceipt of notice of any meeting by any member of the Board of Directors shall not invalidate the meeting or any proceedings taken or any business done at the meeting. No notice of any meeting need be given to any member of the Board of Directors who at the time of the meeting is absent from the State of Hawaii. Any member of the Board of Directors may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting has been given to him. The presence of any member of the Board of Directors at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

(c) A majority of the members of the Board of Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the corporation. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

SECTION 3. GENERAL POWERS

The property, business and affairs of the corporation shall be managed and controlled by the board of directors, which shall have and may exercise all of the powers of the corporation, including, without limitation, all of the powers of the Association as set forth in the Declaration, except such as are expressly reserved to or may from time to time be conferred upon the members by law, by the Articles of Incorporation, by the Declaration or by these By-Laws. The Board of Directors may, by resolution or resolutions passed by a majority of the whole board, create and appoint one or more committees, each committee to consist of two or more of the directors of the corporation which, to the extent provided in said resolution or resolutions or in other provisions of these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The Board of Directors, shall, by a resolution or resolutions passed by a majority of the whole board, appoint the member or members of the Architectural Committee which are to be appointed by the Association and by a resolution or resolutions so passed may remove such member or members, all as set forth in Article IV of the Declaration.

OFFICERS AND AGENTSSECTION 1. DESIGNATION; DUTIES

(a) The officers of the corporation shall be a president, one or more vice presidents, a secretary and a treasurer, who shall be appointed by the Board of Directors and who shall hold office until their successors are appointed and qualified. The corporation may have such other officers, agents and factors as may be deemed necessary, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors. So far as is permitted by law, any two offices may be held by the same person. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as are commonly incident to his office and such duties and powers as the Board of Directors shall from time to time designate. In all cases where the duties of any officer, agent or employee are not specifically prescribed by the By-Laws or by the Board of Directors, such officer, agent or employee shall obey the orders and instructions of the president.

(b) PRESIDENT. Subject to the control of the Board of Directors, the president shall be the chief executive officer of the corporation and shall exercise general supervision and direction over the management and conduct of the affairs and business of the corporation. Unless the Board of Directors

otherwise directs, he shall preside at all meetings of the members and of the Board of Directors at which he is present.

(c) VICE PRESIDENT. The vice president, or if more than one shall have been appointed, the vice presidents in order of priority of appointment, shall assume and perform the duties of the president in the absence or disability of the president or whenever the office of president is vacant. Each vice president shall have such other powers and duties as may be given to him by law or in these By-Laws and as may be assigned to him from time to time by the Board of Director or by the president.

(d) SECRETARY. The secretary shall have charge of the membership ledger, all documents pertaining to the title to all real property owned or held by the corporation, and all rules, regulations and other documents required to be filed with the corporation or in the office of the corporation by the Declaration, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination of every member at the principal office or place of business of the corporation in Honolulu, Hawaii. The secretary shall record all proceedings of the meetings of the members and directors in a book which shall be the property of the corporation, to be kept for that purpose at the office of the corporation in Honolulu, Hawaii, and perform such other duties as shall be assigned him. In the absence of the secretary from any such meeting, a temporary secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book.

(e) TREASURER. Subject to the direction and under the supervision of the Board of Directors, and the provisions of the foregoing paragraph, the treasurer shall have the care and custody of the funds and valuable papers of the corporation, shall have power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the corporation or its order, and shall keep or cause to be kept accurate financial books and accounts of the corporation and to render statements of the same in such form as often as required by the Board of Directors.

SECTION 2. REMOVALS; RESIGNATIONS; VACANCIES

The Board of Directors may at any meeting called for the purpose, by vote of a majority of their entire number, remove from office any officer of the corporation, for or without cause. The Board of Directors may at any meeting, by vote of a majority of the directors present at such meeting, accept the resignation of any officer or director of the corporation, or remove or accept the resignation of any agent or factor or any member of any committee appointed by the Board of Directors or by any committee appointed by the Board of Directors, or by any officer, agent or factor of the corporation. Any vacancy occurring in the office of president, vice president, secretary, treasurer or any other office shall be filled by the Board of Directors, and the officers so chosen shall hold office for the unexpired term in respect of which the vacancy occurred and until their successors shall be duly elected and qualified.

ARTICLE IV

EXECUTION OF INSTRUMENTS

SECTION 1. PERSONS AUTHORIZED

Except in the case of a contract for compensation of the president or the treasurer, in which case the Board of Directors may authorize one or more of its number or one or more officers or subordinate officers to execute the same, all checks, notes, bonds, deeds, leases, contracts or other documents or instruments shall be executed by any two of the following officers: the president, a vice president, the treasurer and the secretary. The members of the corporation or the Board of Directors, by general or special resolution, may designate some other officer to join with one of the foregoing officers in place of the second officer in the execution of any such document or instruments.

ARTICLE V

SEAL

SECTION 1. SEAL

The corporation may adopt and use a corporate seal and it shall be in such form and device as shall from time to time be determined by the members of the corporation.

ARTICLE VI

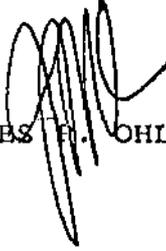
ADOPTION, AMENDMENT AND REPEAL

SECTION 1. VOTE REQUIRED

The By-Laws may be amended or repealed and new By-Laws may be adopted, by action of not less than a seventy-five percent

(75%) of the members at a meeting of the members of the corporation duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider the adoption, amendment or repeal of the By-Laws and the general nature of the same.

These By-Laws are hereby adopted this _____ day of
OCT 23 1990 , 1990, in Honolulu, Hawaii.


JAMES P. OHLMAN

James P. Ohlman , secretary of The Pointe Owners Association, a Hawaii non-profit corporation, hereby certifies that the foregoing is a true copy of the By-Laws of said corporation, and that said By-Laws were adopted on the _____ day of OCT 23 1990 , 1990, and are still in force and effect.

Witness the hand of the undersigned this _____ day of
OCT 23 1990 , 1990.



THE ORIGINAL OF THE DOCUMENT
FILED IN THE OFFICE OF
THE ASSISTANT REGISTRAR
OF THE LAND COURT OF THE
STATE OF HAWAII

Received and filed this
day of March A.D. 1992
at 8:01 o'clock A.M. and
filed as Land Court Document
No. 1893645

We hereby certify that this
is a true copy of the original.
FIRST AMERICAN TITLE CO.
OF HAWAII, INC.

By: Alvin J...

LAND COURT SYSTEM
Return by Mail (X) Pickup () To:

REGULAR SYSTEM

Gilbert D. Butson, Esq.
REINWALD, O'CONNOR, MARRACK,
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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

of

THE POINTE AT HAWAII LOA RIDGE

REINWALD, O'CONNOR, MARRACK,
HOSKINS & PLAYDON
2400 PRI Tower, Grosvenor Center
Honolulu, Hawaii 96813

I N D E X

TO

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

of

THE POINTE AT HAWAII LOA RIDGE

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

of

THE POINTE AT HAWAII LOA RIDGE

This Declaration, made on February 27, 1992, by HMF, Inc., a Hawaii corporation, whose principal place of business is 841 Bishop Street, Suite 2102, Honolulu, Hawaii, 96813, hereinafter referred to as the "Declarant",

ARTICLE I

PREAMBLE

Whereas, Declarant is the developer of the Hawaii Loa Ridge Subdivision situate at Wailupe and Niu, City and County of Honolulu, State of Hawaii; and

Whereas, Declarant has annexed the property more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter called "The Pointe") to the Hawaii Loa Ridge Subdivision by that certain Eighth Declaration of Additional Property Annexed to Hawaii Loa Ridge Subdivision dated February 5, 1992, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1892318 and duly noted on Transfer Certificate of Title No. 384,778; and

Whereas, Lots within The Pointe are subject to that certain Declaration of Covenants, Conditions and Restrictions (hereinafter called the "CCR's") dated February 2, 1981, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1055644, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15357 Page 44, as amended; and

Whereas, Owners of Lots within The Pointe are Members of the Hawaii Loa Ridge Owners Association upon the purchase of a Lot; and

Whereas, Declarant intends for "The Pointe" to be a private, gated community within the Hawaii Loa Ridge Subdivision with its own unique design philosophy having Common Areas for the exclusive use of Lot Owners within The Pointe to be managed by a separate association called "The Pointe Owners Association," the Members of which shall be Owners of Lots within The Pointe; and

Whereas, the Declarant intends for Lots within The Pointe to be improved under building criteria different from Lots within other portions of the Hawaii Loa Ridge Subdivision.

Now Therefore, Declarant hereby declares that all of the property described in Exhibit A shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to these restrictions, meaning the limitations, restrictions, covenants, and conditions set forth in this Declaration, all of which are established, declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of The Pointe. These limitations, restrictions, covenants and conditions shall run with the land of The Pointe and shall be binding upon all parties having or acquiring any right, title or interest in and to the land or any part thereof, and shall inure to the benefit of the Declarant, The Pointe Owners Association and each Owner thereof or any part thereof, and each successor in interest of such Owner.

ARTICLE II

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article II shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ARCHITECT: A person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

2.2 ARCHITECTURAL COMMITTEE: The term "Architectural Committee" shall mean the Committee created pursuant to Article IX.

2.3 ARCHITECTURAL COMMITTEE RULES: The term "Architectural Committee Rules" shall mean rules adopted by the Architectural Committee pursuant to Section 9.5.

2.4 ASSOCIATION: The term "Association" shall mean either the HAWAII LOA RIDGE OWNERS ASSOCIATION and/or THE POINTE OWNERS ASSOCIATION, both of which are non-profit corporations described in Article VI, including their successors and assigns, as the context may require.

2.5 BENEFICIARY: The term "Beneficiary" shall mean a mortgagee under a mortgage.

2.6 BOARD: The term "Board" shall mean the Board of Directors of either or both Associations, as the context may require.

2.7 BY-LAWS: The term "By-Laws" shall mean the By-Laws of either or both Associations, as the context may require, which are or shall be adopted by the Board.

2.8 CHARTER: The term "Charter" shall mean the Charter of the HAWAII LOA RIDGE OWNERS ASSOCIATION, which has been or shall be filed in the Department of Regulatory Agencies of the State of Hawaii or the Articles of Incorporation of THE POINTE OWNERS ASSOCIATION, which have been or shall be filed in the Department of Commerce and Consumer Affairs of the State of Hawaii. The term "Charter" is used interchangeably with the term "Articles".

2.9 COMMON AREA: The term "Common Area" shall mean and those portions of the Project not included within the residential Lots or dedicated to the City and County of Honolulu or agencies thereof for use as public parks, roadways, pump stations, water reservoirs, or similar uses. The Common Area shall be owned by the Association for the use and enjoyment of the Owners and shall be conveyed to the Association in fee for the benefit of the Association. Common Area shall also include all facilities and improvements located within the property designated as Common Area, from time to time constructed thereon. Common Area may consist of an estate in land or an easement.

2.10 DECLARATION: The term "Declaration" shall mean and include the within Declaration of Covenants, Conditions and Restrictions of Hawaii Loa Ridge Subdivision, and/or the Declaration of Covenants, Conditions and Restrictions of The Pointe at Hawaii Loa Ridge, as the context may require, and as either Declaration may from time to time be amended.

2.11 DECLARANT: The term "Declarant" shall mean HMF, Inc., a Hawaii corporation, its successors and assigns.

2.12 EXCAVATION: The term "Excavation" shall mean any disturbance of the surface of the Lot (Except temporarily for planting) which results in the removal of earth or rock to a depth of more than eighteen (18) inches.

2.13 FAMILY: The term "Family" shall mean the immediate family of the Owner or Owners (if ownership is by husband and wife) of a Lot and the parents and siblings (but not members of their separate families) of such Owner or of either of such Owners (if ownership is by husband and wife).

2.14 FILL: The term "Fill" shall mean any addition of rock or earth materials to the surface of the Lot (except temporarily for planting) which increases the existing elevation of such surface of more than eighteen (18) inches.

2.15 FISCAL YEAR: The term "Fiscal Year" shall mean the calendar year from January 1st to and including December 31st.

2.16 IMPROVEMENTS: The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, paving of whatever nature, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

2.17 LOT: The term "Lot" shall mean the subdivided residential Lots, whether improved or unimproved, and all easements appurtenant thereto, together with any Lot added to the Project by annexation pursuant to Section 3.3 of this Declaration.

2.18 MANAGER: The term "Manager" shall mean the person or corporation appointed by the Board pursuant to Subsection 6.8.3.

2.19 MEMBER: The term "Member" shall mean and include a person who is a Member of the Association pursuant to Section 6.2.

2.20 OPERATING FUND: The term "Operating Fund" shall mean the fund created for the receipts and disbursements of the Association, pursuant to Section 7.1.

2.21 OWNER: The term "Owner" or "Lot Owner" shall mean the record Owner, whether one or more persons or entities, including Declarant, of the title to any Lot situated in the Project, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

2.22 PROJECT: The term "Project" or "The Pointe at Hawaii Loa Ridge" shall mean all of the real property described in Exhibit A, together with all improvements made thereon, and together with any real property annexed pursuant to the provisions of Section 3.3 of this Declaration.

2.23 RESIDENCE: The term "Residence" shall mean one single-family dwelling, together with appurtenant garage and servants' quarters and other outbuildings constructed upon a Lot.

2.24 RESIDENTIAL AREA: The term "Residential Area" shall mean all of that area of the Project included in Lots and shall not include the Common Area or any portion of the property dedicated to the City and County of Honolulu or agencies thereof for use as public parks, roadways, pump stations, water reservoirs, or similar uses.

2.25 RESIDENTIAL USE: The term "Residential Use" shall mean occupation and use of a Residence by a single household in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or county rules and regulations.

2.26 RULES: The term "Rules" shall mean the rules adopted by the Board of the Association, as they may from time to time be in effect pursuant to the provisions of Section 6.9.

2.27 SUBDIVISION MAP: The term "Subdivision Map" shall mean any map of Hawaii Loa Ridge filed in the Bureau of Conveyances of the State of Hawaii or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

ARTICLE III

PROPERTY SUBJECT TO RESTRICTIONS

3.1 THE PROJECT: Initially, all of that certain real property located in the City and county of Honolulu, State of Hawaii, described in Exhibit A shall be subject to this Declaration and shall constitute the Project. Declarant hereby declares that all of the property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property and every part thereof. This Declaration shall run with the property and shall be binding upon and inure to the benefit of the Declarant, the Association, each Owner of a Lot in the Project and each successor in interest of such Owner. Each and all of the covenants, conditions, restrictions, limitations, easements, uses and obligations contained herein shall be deemed to be and shall be construed as equitable servitudes enforceable by the Declarant, the Association or any of the Owners of any Lot against other Owners, tenants or occupants of the property, or any portion thereof. Additional property may be annexed to the Project and made subject to this Declaration pursuant to Section 3.3.

3.2 LAND CLASSIFICATION: All land within the Project shall be divided into the following land classifications:

3.2.1 Residential Area, being all of the residential Lots as shown on the Subdivision Map.

3.2.2 Common Area, being all of the Project other than Residential Area or areas dedicated as public parks, roadways, pump stations, water reservoirs or other similar uses dedicated to the City and County of Honolulu or agencies thereof.

3.3 ANNEXATION: Additional property may be annexed to the Project only as specified in the following subsections:

3.3.1 Declarant's Annexation Rights: Declarant may, but shall not be required to, annex any adjacent property to the Project at any time without the vote or approval of any other Owners or the Association. The annexation of any such additional property by Declarant shall be effected by the fulfillment of the following procedures:

3.3.1.1 Declarant shall have recorded a final Subdivision Map or maps for the real property to be annexed; and

3.3.1.2 Declarant shall have recorded a Supplemental Declaration, which may consist of more than one document, and which shall, among other things

(i) described the property to be annexed;

(ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to such property as provided in Subsection 3.3.1.3 below; and

(iii) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the restrictions set forth in this Declaration.

3.3.1.3 Any provisions to the contrary notwithstanding, the Supplemental Declaration referred to in Subsection 3.3.1.2 above may, with respect to all or any part of the property described in such Supplemental Declaration, provide for or refer to one or more documents creating any or all of the following:

(i) such new land classifications other than Common Area and Residential Area and such limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property;

(ii) with respect to Common Area and Residential Area such additional or different limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property, provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such property shall not discriminate between some Owners and other Owners within the Project, except as otherwise provided herein; and/or

(iii) a Declaration, subordinated to the restrictions set forth in this Declaration and applicable exclusively to a specified area.

The Supplemental Declaration as applicable to such property upon the annexation thereof into The Pointe at Hawaii Loa Ridge shall be deemed to include any and all additions and modifications thereto authorized by Subsections (i) and (ii) above and set forth or referred to in such Supplemental Declaration.

3.3.2 **Ownership of Common Area Within Annexed Property:** All that portion of the annexed property designated as Common area shall be conveyed to, accepted by and owned by the Association. The Common Area shall be conveyed to the Association on the same terms and conditions and subject only to those liens, restrictions and encumbrances as are provided in Section 5.1 of this Declaration; provided, however, that the Common Area shall also be subject to any additional or supplemental covenants, conditions and restrictions provided in the Supplemental Declaration pertaining thereto.

3.3.3 **Rights and Obligations of Owners:** After the required annexation procedures are fulfilled, all Owners in the Project shall be entitled to use of the Common Area in such annexed property, except that the Common Area in The Pointe shall be for the exclusive use of Lot Owners in The Pointe. Owners of the annexed property shall be subject to this Declaration and shall be Members in the Association. After each annexation, the assessments for the Project shall be reassessed with the Lots in the annexed property being assessed for a proportionate share of the total expenses for the Project on the same basis as other Lots in the Project, except that Lot Owners in The Pointe shall be solely responsible for the expenses of The Pointe including but not limited to, maintenance of the Common Area therein.

3.3.4 **No Creation of Restrictions to Adjacent Property:** No property, except that described in Exhibit A and hereby made subject to the restrictions set forth in this Declaration and except that specifically annexed as hereinbefore provided shall be deemed subject to these restrictions whether or not shown on any Subdivision Map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. No designation of any parcel, Lot or other area on any map filed by Declarant as a Common Area, road, street or park or as any other type of parcel, Lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, Lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, Lots or areas specifically described in Exhibit A, or specifically later annexed as aforesaid, and so designated on a Subdivision Map for such use, nor shall any Owner, Association, the public, or any public body or agency or any other person acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in

any amendment hereto shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject to the restrictions set forth in this Declaration any land it may now own or hereafter acquire other than that described in Exhibit A or such amendment.

ARTICLE IV

PROPERTY RIGHTS: RESIDENTIAL AREA

4.1 RESIDENTIAL AREA: DESIGN PHILOSOPHY AND CRITERIA:

The Declarant, in an attempt to protect the interests of the Owners as well as the public in general, is endeavoring to develop, maintain and enhance the general attractiveness of the Hawaii Loa Ridge Subdivision in general, and The Pointe, in particular, as seen from all public areas, to provide each Owner as much undisturbed view and unobstructed breeze as practicable, to promote aesthetic standards for the buildings and their relationship to each other, to public spaces and to the premises, and to preserve the natural advantages of the premises for the benefit of all Owners, their visitors and the general public.

The Declarant's primary goal is to create a separate community within the Hawaii Loa Ridge Subdivision that is unique, having a strong sense of community with the surrounding neighborhoods, unity among its individual Improvements and harmony with the site. Therefore, individual architectural expression will be restricted by this goal. There is a desire to encourage freedom of individual expression of the Owners in the development of the Lots and the Improvements thereon to the extent consistent with the objectives and restrictions hereof. These restrictions will serve to provide protection for all Owners within The Pointe.

The Declarant's objectives are to create a separate residential community within the Hawaii Loa Ridge Subdivision that blends with its environment and to develop a private, unique community of residences compatible to a Hawaiian lifestyle that is unified and harmonious in its use of form, materials and color. The Owners are encouraged to use natural materials and colors, and use designs which respond architecturally to climate and environmental opportunities and constraints, including, but not limited to views from and of each Lot and Improvement, sun, wind, glare, rain and neighboring structures. To this end, creativity of design is encouraged within the confines of the Declarant's objectives. Residences should be stepped to follow the natural contours of the land. High, unusable underfloor areas should be avoided. Where such areas are unavoidable, they should be enclosed so as to give the appearance that the building grows out of the site, rather than perched upon it. Low profile buildings, when viewed from all angles, are preferred.

Harsh contrasts, faddish and self-conscious design will not be permitted.

The Pointe will be an exclusive, gated area within the Hawaii Loa Ridge Subdivision, with executive homes on estate size Lots fronted by large hedges to enhance privacy. Owners of Lots will, in addition to being members of The Hawaii Loa Ridge Owners Association, be members of The Pointe Owners Association, having its own Board of Directors to manage the Common Areas within The Pointe which will be for the exclusive use of Owners of Lots within The Pointe.

The Architectural Committee is assigned the responsibility of administering these restrictions in accordance with the provisions of Article IX.

Therefore, Lots within the Residential Area of The Pointe shall be for the exclusive use and benefit of the Owners thereof, subject, however, to all of the following criteria:

4.1.1 Setback and Height: All Improvements shall be constructed in accordance with applicable building height lines, setback and height provisions as set forth on the Declarant's plot plans for each Lot, the Subdivision Map and/or local ordinance. No structure of any nature shall be constructed or permitted on a Lot which violates any provision of the requirements of the Land Use Ordinance No. 86-96, effective October 22, 1986, as amended, any successor ordinance of the City and County of Honolulu or any other declaration of building restrictions recorded against the Lot, including, but not limited to this Supplemental Declaration, whichever is most restrictive.

All buildings, shall be set back a minimum of twenty (20) feet from the property line at the street. Variances will be considered by the Architectural Committee in cases involving unusually shallow depths or odd shaped Lots or in which extensive excavation, fill or embankment will be required.

4.1.2 Construction Materials and Colors: All materials and Improvements shall be in conformity with the color scheme, type, quality, and other criteria established by the Architectural Committee from time to time and as set forth below.

4.1.2.1 Exterior Building Wall Materials: The following exterior building wall materials area recommended.

- (i) Brick in earthtones used as accent walls;
- (ii) Textured concrete either bush hammered or sandblasted and/or integral colored;

I N D E X

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

of

THE POINTE AT HAWAII LOA RIDGE

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

of

THE POINTE AT HAWAII LOA RIDGE

This Declaration, made on February 27, 1992, by HMF, Inc., a Hawaii corporation, whose principal place of business is 841 Bishop Street, Suite 2102, Honolulu, Hawaii, 96813, hereinafter referred to as the "Declarant",

ARTICLE I

PREAMBLE

Whereas, Declarant is the developer of the Hawaii Loa Ridge subdivision situate at Wailupe and Niu, City and County of Honolulu, State of Hawaii; and

Whereas, Declarant has annexed the property more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter called "The Pointe") to the Hawaii Loa Ridge Subdivision by that certain Eighth Declaration of Additional Property Annexed to Hawaii Loa Ridge Subdivision dated February 5, 1992, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1892318 and duly noted on Transfer Certificate of Title No. 384,778; and

Whereas, Lots within The Pointe are subject to that certain Declaration of Covenants, Conditions and Restrictions (hereinafter called the "CCR's") dated February 2, 1981, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1055644, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15357 Page 44, as amended; and

Whereas, Owners of Lots within The Pointe are Members of the Hawaii Loa Ridge Owners Association upon the purchase of a Lot; and

Whereas, Declarant intends for "The Pointe" to be a private, gated community within the Hawaii Loa Ridge Subdivision with its own unique design philosophy having Common Areas for the exclusive use of Lot Owners within The Pointe to be managed by a separate association called "The Pointe Owners Association," the Members of which shall be Owners of Lots within The Pointe; and

Whereas, the Declarant intends for Lots within The Pointe to be improved under building criteria different from Lots within other portions of the Hawaii Loa Ridge Subdivision.

Now Therefore, Declarant hereby declares that all of the property described in Exhibit A shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to these restrictions, meaning the limitations, restrictions, covenants, and conditions set forth in this Declaration, all of which are established, declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of The Pointe. These limitations, restrictions, covenants and conditions shall run with the land of The Pointe and shall be binding upon all parties having or acquiring any right, title or interest in and to the land or any part thereof, and shall inure to the benefit of the Declarant, The Pointe Owners Association and each Owner thereof or any part thereof, and each successor in interest of such Owner.

ARTICLE II

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article II shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ARCHITECT: A person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

2.2 ARCHITECTURAL COMMITTEE: The term "Architectural Committee" shall mean the Committee created pursuant to Article IX.

2.3 ARCHITECTURAL COMMITTEE RULES: The term "Architectural Committee Rules" shall mean rules adopted by the Architectural Committee pursuant to Section 9.5.

2.4 ASSOCIATION: The term "Association" shall mean either the HAWAII LOA RIDGE OWNERS ASSOCIATION and/or THE POINTE OWNERS ASSOCIATION, both of which are non-profit corporations described in Article VI, including their successors and assigns, as the context may require.

2.5 BENEFICIARY: The term "Beneficiary" shall mean a mortgagee under a mortgage.

2.6 BOARD: The term "Board" shall mean the Board of Directors of either or both Associations, as the context may require.

2.7 BY-LAWS: The term "By-Laws" shall mean the By-Laws of either or both Associations, as the context may require, which are or shall be adopted by the Board.

2.8 CHARTER: The term "Charter" shall mean the Charter of the HAWAII LOA RIDGE OWNERS ASSOCIATION, which has been or shall be filed in the Department of Regulatory Agencies of the State of Hawaii or the Articles of Incorporation of THE POINTE OWNERS ASSOCIATION, which have been or shall be filed in the Department of Commerce and Consumer Affairs of the State of Hawaii. The term "Charter" is used interchangeably with the term "Articles".

2.9 COMMON AREA: The term "Common Area" shall mean and those portions of the Project not included within the residential Lots or dedicated to the City and County of Honolulu or agencies thereof for use as public parks, roadways, pump stations, water reservoirs, or similar uses. The Common Area shall be owned by the Association for the use and enjoyment of the Owners and shall be conveyed to the Association in fee for the benefit of the Association. Common Area shall also include all facilities and Improvements located within the property designated as Common Area, from time to time constructed thereon. Common Area may consist of an estate in land or an easement.

2.10 DECLARATION: The term "Declaration" shall mean and include the within Declaration of Covenants, Conditions and Restrictions of Hawaii Loa Ridge Subdivision, and/or the Declaration of Covenants, Conditions and Restrictions of The Pointe at Hawaii Loa Ridge, as the context may require, and as either Declaration may from time to time be amended.

2.11 DECLARANT: The term "Declarant" shall mean HMF, Inc., a Hawaii corporation, its successors and assigns.

2.12 EXCAVATION: The term "Excavation" shall mean any disturbance of the surface of the Lot (Except temporarily for planting) which results in the removal of earth or rock to a depth of more than eighteen (18) inches.

2.13 FAMILY: The term "Family" shall mean the immediate family of the Owner or Owners (if ownership is by husband and wife) of a Lot and the parents and siblings (but not members of their separate families) of such Owner or of either of such Owners (if ownership is by husband and wife).

2.14 FILL: The term "Fill" shall mean any addition of rock or earth materials to the surface of the Lot (except temporarily for planting) which increases the existing elevation of such surface of more than eighteen (18) inches.

2.15 FISCAL YEAR: The term "Fiscal Year" shall mean the calendar year from January 1st to and including December 31st.

2.16 IMPROVEMENTS: The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, paving of whatever nature, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

2.17 LOT: The term "Lot" shall mean the subdivided residential Lots, whether improved or unimproved, and all easements appurtenant thereto, together with any Lot added to the Project by annexation pursuant to Section 3.3 of this Declaration.

2.18 MANAGER: The term "Manager" shall mean the person or corporation appointed by the Board pursuant to Subsection 6.8.3.

2.19 MEMBER: The term "Member" shall mean and include a person who is a Member of the Association pursuant to Section 6.2.

2.20 OPERATING FUND: The term "Operating Fund" shall mean the fund created for the receipts and disbursements of the Association, pursuant to Section 7.1.

2.21 OWNER: The term "Owner" or "Lot Owner" shall mean the record Owner, whether one or more persons or entities, including Declarant, of the title to any Lot situated in the Project, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

2.22 PROJECT: The term "Project" or "The Pointe at Hawaii Loa Ridge" shall mean all of the real property described in Exhibit A, together with all improvements made thereon, and together with any real property annexed pursuant to the provisions of Section 3.3 of this Declaration.

2.23 RESIDENCE: The term "Residence" shall mean one single-family dwelling, together with appurtenant garage and servants' quarters and other outbuildings constructed upon a Lot.

2.24 RESIDENTIAL AREA: The term "Residential Area" shall mean all of that area of the Project included in Lots and shall not include the Common Area or any portion of the property dedicated to the City and County of Honolulu or agencies thereof for use as public parks, roadways, pump stations, water reservoirs, or similar uses.

2.25 RESIDENTIAL USE: The term "Residential Use" shall mean occupation and use of a Residence by a single household in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or county rules and regulations.

2.26 RULES: The term "Rules" shall mean the rules adopted by the Board of the Association, as they may from time to time be in effect pursuant to the provisions of Section 6.9.

2.27 SUBDIVISION MAP: The term "Subdivision Map" shall mean any map of Hawaii Loa Ridge filed in the Bureau of Conveyances of the State of Hawaii or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

ARTICLE III

PROPERTY SUBJECT TO RESTRICTIONS

3.1 THE PROJECT: Initially, all of that certain real property located in the City and county of Honolulu, State of Hawaii, described in Exhibit A shall be subject to this Declaration and shall constitute the Project. Declarant hereby declares that all of the property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property and every part thereof. This Declaration shall run with the property and shall be binding upon and inure to the benefit of the Declarant, the Association, each Owner of a Lot in the Project and each successor in interest of such Owner. Each and all of the covenants, conditions, restrictions, limitations, easements, uses and obligations contained herein shall be deemed to be and shall be construed as equitable servitudes enforceable by the Declarant, the Association or any of the Owners of any Lot against other Owners, tenants or occupants of the property, or any portion thereof. Additional property may be annexed to the Project and made subject to this Declaration pursuant to Section 3.3.

3.2 LAND CLASSIFICATION: All land within the Project shall be divided into the following land classifications:

3.2.1 Residential Area, being all of the residential Lots as shown on the Subdivision Map.

3.2.2 Common Area, being all of the Project other than Residential Area or areas dedicated as public parks, roadways, pump stations, water reservoirs or other similar uses dedicated to the City and County of Honolulu or agencies thereof.

3.3 ANNEXATION: Additional property may be annexed to the Project only as specified in the following subsections:

3.3.1 Declarant's Annexation Rights: Declarant may, but shall not be required to, annex any adjacent property to the Project at any time without the vote or approval of any other Owners or the Association. The annexation of any such additional property by Declarant shall be effected by the fulfillment of the following procedures:

3.3.1.1 Declarant shall have recorded a final Subdivision Map or maps for the real property to be annexed; and

3.3.1.2 Declarant shall have recorded a Supplemental Declaration, which may consist of more than one document, and which shall, among other things

(i) described the property to be annexed;

(ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to such property as provided in Subsection 3.3.1.3 below; and

(iii) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the restrictions set forth in this Declaration.

3.3.1.3 Any provisions to the contrary notwithstanding, the Supplemental Declaration referred to in Subsection 3.3.1.2 above may, with respect to all or any part of the property described in such Supplemental Declaration, provide for or refer to one or more documents creating any or all of the following:

(i) such new land classifications other than Common Area and Residential Area and such limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property;

(ii) with respect to Common Area and Residential Area such additional or different limitations, restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property, provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such property shall not discriminate between some Owners and other Owners within the Project, except as otherwise provided herein; and/or

(iii) a Declaration, subordinated to the restrictions set forth in this Declaration and applicable exclusively to a specified area.

The Supplemental Declaration as applicable to such property upon the annexation thereof into The Pointe at Hawaii Loa Ridge shall be deemed to include any and all additions and modifications thereto authorized by Subsections (i) and (ii) above and set forth or referred to in such Supplemental Declaration.

3.3.2 Ownership of Common Area Within Annexed Property: All that portion of the annexed property designated as Common area shall be conveyed to, accepted by and owned by the Association. The Common Area shall be conveyed to the Association on the same terms and conditions and subject only to those liens, restrictions and encumbrances as are provided in Section 5.1 of this Declaration; provided, however, that the Common Area shall also be subject to any additional or supplemental covenants, conditions and restrictions provided in the Supplemental Declaration pertaining thereto.

3.3.3 Rights and Obligations of Owners: After the required annexation procedures are fulfilled, all Owners in the Project shall be entitled to use of the Common Area in such annexed property, except that the Common Area in The Pointe shall be for the exclusive use of Lot Owners in The Pointe. Owners of the annexed property shall be subject to this Declaration and shall be Members in the Association. After each annexation, the assessments for the Project shall be reassessed with the Lots in the annexed property being assessed for a proportionate share of the total expenses for the Project on the same basis as other Lots in the Project, except that Lot Owners in The Pointe shall be solely responsible for the expenses of The Pointe including but not limited to, maintenance of the Common Area therein.

3.3.4 No Creation of Restrictions to Adjacent Property: No property, except that described in Exhibit A and hereby made subject to the restrictions set forth in this Declaration and except that specifically annexed as hereinbefore provided shall be deemed subject to these restrictions whether or not shown on any Subdivision Map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. No designation of any parcel, Lot or other area on any map filed by Declarant as a Common Area, road, street or park or as any other type of parcel, Lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, Lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, Lots or areas specifically described in Exhibit A, or specifically later annexed as aforesaid, and so designated on a Subdivision Map for such use, nor shall any Owner, Association, the public, or any public body or agency or any other person acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in

any amendment hereto shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject to the restrictions set forth in this Declaration any land it may now own or hereafter acquire other than that described in Exhibit A or such amendment.

ARTICLE IV

PROPERTY RIGHTS: RESIDENTIAL AREA

4.1 RESIDENTIAL AREA: DESIGN PHILOSOPHY AND CRITERIA:

The Declarant, in an attempt to protect the interests of the Owners as well as the public in general, is endeavoring to develop, maintain and enhance the general attractiveness of the Hawaii Loa Ridge Subdivision in general, and The Pointe, in particular, as seen from all public areas, to provide each Owner as much undisturbed view and unobstructed breeze as practicable, to promote aesthetic standards for the buildings and their relationship to each other, to public spaces and to the premises, and to preserve the natural advantages of the premises for the benefit of all Owners, their visitors and the general public.

The Declarant's primary goal is to create a separate community within the Hawaii Loa Ridge Subdivision that is unique, having a strong sense of community with the surrounding neighborhoods, unity among its individual Improvements and harmony with the site. Therefore, individual architectural expression will be restricted by this goal. There is a desire to encourage freedom of individual expression of the Owners in the development of the Lots and the Improvements thereon to the extent consistent with the objectives and restrictions hereof. These restrictions will serve to provide protection for all Owners within The Pointe.

The Declarant's objectives are to create a separate residential community within the Hawaii Loa Ridge Subdivision that blends with its environment and to develop a private, unique community of residences compatible to a Hawaiian lifestyle that is unified and harmonious in its use of form, materials and color. The Owners are encouraged to use natural materials and colors, and use designs which respond architecturally to climate and environmental opportunities and constraints, including, but not limited to views from and of each Lot and Improvement, sun, wind, glare, rain and neighboring structures. To this end, creativity of design is encouraged within the confines of the Declarant's objectives. Residences should be stepped to follow the natural contours of the land. High, unusable underfloor areas should be avoided. Where such areas are unavoidable, they should be enclosed so as to give the appearance that the building grows out of the site, rather than perched upon it. Low profile buildings, when viewed from all angles, are preferred.

Harsh contrasts, faddish and self-conscious design will not be permitted.

The Pointe will be an exclusive, gated area within the Hawaii Loa Ridge Subdivision, with executive homes on estate size Lots fronted by large hedges to enhance privacy. Owners of Lots will, in addition to being members of The Hawaii Loa Ridge Owners Association, be members of The Pointe Owners Association, having its own Board of Directors to manage the Common Areas within The Pointe which will be for the exclusive use of Owners of Lots within The Pointe.

The Architectural Committee is assigned the responsibility of administering these restrictions in accordance with the provisions of Article IX.

Therefore, Lots within the Residential Area of The Pointe shall be for the exclusive use and benefit of the Owners thereof, subject, however, to all of the following criteria:

4.1.1 Setback and Height: All Improvements shall be constructed in accordance with applicable building height lines, setback and height provisions as set forth on the Declarant's plot plans for each Lot, the Subdivision Map and/or local ordinance. No structure of any nature shall be constructed or permitted on a Lot which violates any provision of the requirements of the Land Use Ordinance No. 86-96, effective October 22, 1986, as amended, any successor ordinance of the City and County of Honolulu or any other declaration of building restrictions recorded against the Lot, including, but not limited to this Supplemental Declaration, whichever is most restrictive.

All buildings, shall be set back a minimum of twenty (20) feet from the property line at the street. Variances will be considered by the Architectural Committee in cases involving unusually shallow depths or odd shaped Lots or in which extensive excavation, fill or embankment will be required.

4.1.2 Construction Materials and Colors: All materials and Improvements shall be in conformity with the color scheme, type, quality, and other criteria established by the Architectural Committee from time to time and as set forth below.

4.1.2.1 Exterior Building Wall Materials: The following exterior building wall materials area recommended.

- (i) Brick in earthtones used as accent walls;
- (ii) Textured concrete either bush hammered or sandblasted and/or integral colored;

- (iii) Textured plaster painted or integral color;
- (iv) Rough textured marble;
- (v) Ceramic tiles used as an accent or accent wall;
- (vi) Wood; and
- (vii) Stone.

The following materials are prohibited:

- (i) Mica plaster
- (ii) Concrete block;
- (iii) Corrugated metal;
- (iv) Standard precision block; and
- (v) Gloss-glazed ceramic tile.

4.1.2.2 Colors: Colors for exterior walls and surfaces shall be nonglaring and muted consisting of earthtones. Bright whites will not be permitted. Blue tones will not be permitted except for accents.

4.1.2.3 Painting:

- (i) Wherever painted surfaces are specified, paint shall be applied in a minimum of two coats; one prime coat and a finish coat.
- (ii) All paint shall be applied from manufacturer's receptacles, undiluted, except as clearly stated or permitted by the manufacturer's instructions.

4.1.2.4 Construction: Exterior siding for double-wall construction shall consist of not less than 5/8 inch thick material, or equal, subject to the approval of the Architectural Committee. Single wall construction is prohibited.

4.1.2.5 Roofing Materials: The following recommended roofing material must be installed in strict accordance with the manufacturer's and/or appropriate association's specifications:

- (i) Colored concrete or clay tiles;
- (ii) Wood shake or shingles;
- (iii) Standing seam copper roof provided standing seam or metal batt is a minimum twelve (12) inches apart and standing seams or batts are a minimum one and one-half (1-1/2) inches in height; and
- (iv) Built-up gravel.

Roofs shall have a finished surface that will not produce glare or have reflective qualities.

The following roofing materials are prohibited:

- (i) Corrugated metal;
- (ii) White or bright rock;
- (iii) Asphalt shingles;
- (iv) Asbestos shingles;
- (v) Decramastic roofing;
- (vi) Mastic coated, pattern stamped sheet metal;
- (vii) Spray urethane foam;
- (viii) Glossy or reflective materials; and
- (ix) Cap sheet.

Other types of roofing material will be considered by the Architectural Committee if requested by the Owner and upon submission of evidence of quality comparable to recommended roofing materials and provided the material is compatible to the surroundings.

4.1.2.6 Roof Colors: Roofs shall have earthtone colors complimentary to the surrounding hillsides and in harmony with the terrain. Skylites shall be clear, bronze or smoke color plastic or glass with the metal frame colored to match the surrounding roofing color. White plastic and white aluminum shall not be permitted. Blue materials are expressly prohibited. Multi-colored roof tiles shall be harmonious and random mixed. Rigid or regular patterns are prohibited.

4.1.2.7 Roof Slopes: Roof slopes shall have a minimum slope of four (4) inches in twelve (12) inches except that no more than forty percent (40%) of the roof area may have a slope less than four (4) inches in twelve (12) inches, but no less than one (1) inch in twelve (12) inches. Roof overhangs are strongly encouraged.

4.1.2.8 Exterior Glass and Glazing: The following glass and glazing materials are recommended:

- (i) Glass: Solar bronze or clear with bronze colored metal frames or wood frames.

The following glass and glazing materials are prohibited:

- (i) Mirrored glass;
- (ii) Green or blue-tinted glass; and
- (iii) Nonanodized or clear anodized aluminum frames.

4.1.2.9 Paving Materials: The following paving materials are recommended:

- (i) Uncolored concrete with sand, trowel or broom finish;
- (ii) Quarry tile, or paving brick tile in earthtones;
- (iii) Concrete, integrally colored, rock salt or exposed aggregate finish with brick or wood edge;
- (iv) Cobblestone - textured or stamped concrete;
- (v) Washed terrazzo;

- (vi) Exposed aggregate, pea gravel in concrete; and
- (vii) Large, rough-textured precast integrally colored pavers.

The following paving material is prohibited:

- (i) Asphalt, except for tennis courts.

4.1.3 Exterior Lighting: There shall be no exterior lighting installed, operated or maintained, the light source of which is visible from any street or any other Lot, except as approved by the Architectural Committee.

4.1.4 Specific Limitations. Regardless of the cost or replacement value of same, the following specific conditions, limitations and restrictions shall be applicable to any Improvement, alteration or repair undertaken upon any Lot:

- (i) no second-hand or used lumber or other material shall be used in any construction without the prior approval of the Architectural Committee;
- (ii) all framing lumber shall be pressure treated against termites and rot and shall carry a five-year guarantee against termite damage; and
- (iii) rain gutters shall be of a matching type for the Improvements served and, except for copper gutters, shall be painted in non-reflective colors which match the trim or siding colors of the Improvement.

4.1.5 Removal of Debris. In connection with the construction of any Improvement on any Lot:

- (i) the Owner of such Lot shall be strictly responsible to ensure that all trash, debris and other refuse material does not accumulate and is promptly and properly disposed of frequently and that no trash, spoil, debris, excavated materials or other refuse material is placed on any other Lot or property in the Common Area;

- (ii) in every contract for the construction of Improvements, the Owner of such Lot shall ensure that there is adequate provision made therein for the prompt and proper removal and disposal of all trash, spoil, debris, excavated material and other refuse material; and
- (iii) the Owner at all times shall keep the Owner's Lot maintained in a manner commensurate with the character of The Pointe.

In order to ensure compliance, the Owner shall deposit \$5000.00 with the Declarant at the time of purchase of a Lot which may be used by Declarant to remove trash, debris or refuse material from the Owner's Lot or to maintain the Lot if the Owner fails to do so within five (5) days after Declarant's written notice of a violation. Declarant may, but is not required to, transfer an Owner's deposit to the Association and after such transfer, the Association may provide the notice to Owner required herein and use such funds. The Owner may request return of the Owner's deposit a reasonable period of time after final completion of construction of the Improvements and installation of landscaping. The Association shall refund the unused portion of the deposit, if any, after making an inspection of the Owner's Lot, if the Association determines, in its sole and absolute discretion, that the Owner is in compliance.

4.1.6 Walls and Fences: Walls must be set back a minimum of three (3) feet from property lines at street frontage to allow for planting of the hedge required by Subsection 4.16.6. No garden wall or fence built along property lines or within the setback areas or view channels, whether or not used as a retaining wall, shall have an exposed face higher than six (6) feet above the highest existing or approved finish grade at any given point at the wall or fence. Retaining walls of heights greater than nine (9) feet above the highest existing or approved finish grade at the wall shall require terracing at intervals no greater than nine (9) feet. Terraces shall be a minimum of four (4) feet wide and all terraces must be landscaped in accordance with Section 4.16.

4.1.7 Mailboxes: Mailboxes shall be of a design provided by the Declarant.

4.1.8 Basketball Standards: No basketball standards or fixed sports apparatus shall be attached to any Residence or garage or be erected on any Lot, except as approved by the Architectural Committee.

4.1.9 Garages: Each residence shall have a double-car garage, integrated with the design of the residence, containing not less than 450 square feet of parking area and a width of not less than 20 feet between outside supports. Every garage, whether attached or detached, shall contain not less than an additional 150 square feet of enclosed and covered area for service and storage facilities. Carports and Single-car garages will not be permitted. Garages for more than two cars are encouraged.

Garages shall be used primarily for the parking of motor vehicles. Doors to garages shall be kept closed except when necessary for movement of motor vehicles and other permitted items therefrom.

All garages shall be a minimum of twenty (20) feet from the property line at the street. Variances from this requirement will be considered by the Architectural Committee in cases involving unusually shallow depth or odd shape Lots, or in which extensive excavation or embankment would be required.

4.1.10 Signs: No signs whatsoever, including but not limited to "for sale" signs, commercial, political and similar signs, shall be erected or maintained on any Lot within the Residential Area.

4.2 RESIDENTIAL AREA: GRADING. EXCAVATION. FILL AND DRAINAGE: THE LAND COMPRISING THE HAWAII LOA RIDGE SUBDIVISION IS FORMED OF BASALTIC ROCK. DUE TO STEEP TOPOGRAPHY AND RAPID WATER RUNOFF THE SOILS ARE GENERALLY DRY EXCEPT DURING PERIODS OF EXTREMELY HEAVY RAINFALL. SOIL COVERING IS THIN AND CHARACTERIZED BY ROCK OUTCROPPINGS AND LOOSE SURFACE ROCK.

THE OWNER'S ATTENTION IS DIRECTED TO THE PRESENCE OF MODERATELY EXPANSIVE SOIL AT OR NEAR THE SURFACE. FOUNDATION DESIGN SHALL TAKE INTO ACCOUNT ANY SPECIAL DESIGN CONSIDERATIONS REQUIRED DUE TO THE PRESENCE OF THE MODERATELY EXPANSIVE SOIL AND OTHER SITE OR GEOLOGICAL CONDITIONS. THE OWNER IS ENCOURAGED TO SEEK THE ASSISTANCE OF A LICENSED SOILS ENGINEER TO EXAMINE AND TEST THE SOILS CONDITIONS ON THE OWNER'S LOT PRIOR TO UNDERTAKING ANY CONSTRUCTION. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SOIL AND OTHER SITE OR GEOLOGICAL CONDITIONS.

THE OWNER SHALL ACCEPT THE CONDITION OF THE LOT AS IS AND SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE LOT, INCLUDING WIND AND WATER EROSION CONTROL. ALL GRADING, EXCAVATION, FILL, DRAINAGE AND SITE WORK REQUIRED AFTER THE OWNER PURCHASES A LOT SHALL BE DONE ONLY IN ACCORDANCE WITH PLANS APPROVED BY THE ARCHITECTURAL COMMITTEE AND AT THE OWNER'S EXPENSE.

4.2.1 Grading: The Owner shall obtain all permits for grading cuts and fills as are required by the City and County of Honolulu prior to commencement of any grading or filling and shall abide by requirements of all local ordinances.

4.2.2 Excavation and Fill: Fill or top soil material brought to the site by the Owner shall be clean and free of adobe, termites, and deleterious matter.

All excavation and fill areas shall be shaped to blend into the adjacent land forms and shall be done so as not to adversely affect adjacent Lots or Common Area.

Whenever excavation and fill creates an unstable bank condition, or potentially unstable bank condition, the Owner shall take appropriate action to control and retain the embankment. Excavation or fill which, in the judgment of the Architectural Committee, creates a high and unsightly retaining wall may be disapproved.

Whenever excavation or fill requires the construction of a retaining wall it shall be the Owner's responsibility to install and maintain the wall. All retaining walls placed upon embankments or fill areas of more than two (2) feet in height or depth shall be designed by a registered architect or structural engineer.

Whenever excavation or fill requires maintenance of, or causes destruction of existing drainage swales or natural drainage patterns, it shall be the Owner's responsibility to restore such swales and drainage patterns or to otherwise provide for adequate drainage.

4.2.3 Drainage: The Subdivision Map locates all drainage easements. The Owner is required to direct the Owner's architect to examine the Map before preparing the site plans. The flow of surface or subsurface drainage onto, across or from each Lot must not be obstructed. Such runoff shall be dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to property. The Architectural Committee will closely scrutinize the proposed location of Lot drainage facilities and may require revisions to provide for acceptance or discharge at certain points or locations along Lot

boundaries as indicated on the Subdivision Map. The Owner, however, shall be solely responsible for the actual, adequate design of these facilities, and, shall be liable for all claims or damages resulting therefrom. The Architectural Committee will not unreasonably withhold approval of any design for lot drainage facilities but will disapprove designs which, in its opinion, are impractical or do not adequately consider the possible adverse effects on other Lots.

The Owner shall, in the event of any violations of this Section, restore such Lot and/or any other affected property to its state existing immediately prior to such violations, including the filling of any excavation or removal of any fill. If the Owner fails or refuses to restore such Lot and/or any other affected property as aforesaid, then the Association may do such restoration and the Owner of such Lot shall reimburse the Association for all expenses, incurred in connection therewith.

4.3 DESIGN AND CONSTRUCTION DETAILS:

4.3.1 Each Residence, exclusive of garage and attached or detached open lanai(s), shall have a minimum enclosed floor area of 2700 square feet.

4.3.2 The Residence proper, including garage and lanai(s), shall cost not less than \$400,000.00 exclusive of costs for swimming pools, retaining walls which are not a part of the residence foundation, and other Lot Improvements and exclusive also of consultant's fees, appliances and interior furnishings, including carpets and drapery. The Owner shall, upon request, furnish to the Architectural Committee a written statement by the supervising architect or other party acceptable to the Architectural Committee certifying that, to the best of his knowledge and belief, the cost of the dwelling proper, including garage and lanai(s), will be at least \$400,000.00 and containing such data in reasonable detail as may be necessary to support such certification.

4.4 LOT COVERAGE AND FLOOR AREA: The lot coverage area, being the total area under roof and trellis work within the wall lines and/or the outer vertical support members (including balcony railings) of all buildings on the Lot but not including roof overhangs, shall amount to not more than one-third (1/3) of the area of the Lot. The maximum floor area of a Residence shall not be greater than fifty percent (50%) of the Lot area. Floor area shall include lanais and balconies in the calculation of the percentage, but excluding roof overhangs.

4.5 FOUNDATIONS: It shall be the Owner's responsibility to direct the Owner's architect and engineer to examine the Lot and arrange for subsurface soil investigation and, thereafter, to design the Improvements accordingly.

4.6 STRUCTURAL ANALYSIS: The Architectural Committee, in reviewing building plans, will not undertake any structural analysis nor make any representation as to the sufficiency of the design or the proposed construction. This will be a matter solely for determination by the Owner or his architect.

4.7 HEIGHT OF BUILDINGS AND CHIMNEYS:

4.7.1 Declarant will provide the Owner with a plot plan of the Owner's Lot at the time of the purchase of the Lot by the Owner detailing the location of all view planes, view channels, the buildable area and the maximum heights for the construction of Improvements within the buildable area. No portion of any Improvement, except chimneys, shall exceed building heights permitted by the LVO or the restrictions shown on the plot plan, whichever is more restrictive.

4.7.2 No chimney shall extend more than four (4) feet above the highest point of the roof of the dwelling.

4.8 UNDER-HOUSE SUPPORT MEMBERS:

4.8.1 Improvements should be stepped so as to follow the contours of the land.

4.8.2 Knee bracing shall be avoided or fully concealed.

4.8.3 Because of the visual importance of the underhouse construction, individual solutions will be reviewed and approved on the basis of the objectives stated in this Article IV.

4.9 SWIMMING POOLS AND PONDS: The construction of swimming pools and other types of ponds will be governed by the following:

4.9.1 Construction shall be in accordance with plans first prepared by the Owner and approved in writing by the Architectural Committee, and use shall be subject to the terms and conditions of this Declaration.

4.9.2 The Owner shall provide a sound-treated filtering pump unit in order to prevent noise nuisance. All equipment must be housed in sound insulated structures or underground and be completely out of view.

4.9.3 The pool or pond shall be kept operable in accordance with the rules and regulations of the State Department of Health. Upon abandonment, or should the pool or pond become a nuisance, the Owner will demolish the same and, insofar as is practicable, restore the land to a condition approximating that which existed prior to the construction of the pool or pond, and will thereafter properly landscape and maintain said restored land. The method of demolishing the pool or pond shall be subject to the Architectural Committee's approval.

4.9.4 Drainage of any pool or pond shall be made directly to an existing collection area, improved drainage area or existing storm drain system. No drainage shall be permitted over any other Residential Lot or over any land designated conservation.

4.10 AIR CONDITIONING SYSTEMS: Prior to the installation of the air conditioning systems, the Owner shall secure the written concurrence of the Architectural Committee as to the location and type of system. Such air conditioning system shall be sound-treated to prevent noise nuisance and landscaped from view of adjacent Lots and streets.

4.11 SOLAR HEATING: Solar heating panels should be an integral part of the design of the Improvements and all plans submitted to the Architectural Committee for approval shall be required to indicate a design solution for incorporating panels even though panels are not a part of the initial Improvements. Subsequent installation shall conform to this design. Solar roof panels shall conform to roof color requirements of Subsection 4.1.2.6.

4.12 GROUND TERMITE TREATMENT:

4.12.1 Soil under all concrete slabs on ground and under all building floors, whether on ground or over air space, and under all footings and masonry foundation walls shall be treated against subterranean termites by a reliable, established and licensed termite control agency.

4.12.2 Treatment shall be guaranteed in writing by said agency against termite infestation for a period of five years. The guarantee shall include one automatic annual inspection service and retreatment of any infested area without extra cost within the guaranteed period.

4.12.3 Chemicals used outside of the buildings or in accessible spaces under buildings shall be non-poisonous to children, plants and pets.

4.13 DRIVEWAYS:

4.13.1 Driveways shall be paved with concrete. Textured patterns or textured banding is encouraged.

4.13.2 Drop driveways shall be constructed by the Owner prior to any other work being done and shall be used during construction in order to prevent damage to existing concrete gutters, curbs, sidewalks and any underground utility lines. Any damage caused by the Owner, the Owner's contractor or agent, shall be the responsibility of the Owner. At the completion of construction, all curbs, gutters and sidewalks fronting the Owner's Lot will be inspected for damage and repaired by the Owners at the Owner's expense.

4.13.3 The following rules shall apply to the design of driveway slopes:

(i) The absolute maximum slope of a driveway without a vertical curve is 16%.

(ii) The absolute slope of a driveway with a vertical curve is 25%.

(iii) Vertical curves shall have a minimum horizontal length of twelve (12) feet and shall slope one-half (1/2) the angle of the driveway.

(iv) If the driveway slope is greater than sixteen percent (16%), an alternate pedestrian walk shall be provided. Pedestrian walks may parallel the driveway, in which case steps shall be provided.

4.14 RESIDENTIAL AREA: PERMITTED USES AND LIMITATIONS: CONSTRUCTION AND ALTERATION OF IMPROVEMENTS: Absolutely no construction or alteration of Improvements may be undertaken on a Lot without prior approval of the Architectural Committee pursuant to Article IX of this Declaration. The following standards and restrictions are applicable to the construction, reconstruction, alteration, repair and refinishing of any and all Improvements from time to time existing upon any Lot.

4.14.1 Residence and Use: No more than one Residence shall be constructed on any Lot, except for the construction of a guest house so long as such construction has

received all required governmental approvals. Each Lot within the Residential Area shall be improved and used exclusively for Residential Use as defined in this Declaration. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot or in any Improvement. Nothing herein shall be deemed to prevent:

- (i) any artist, artisan or craftsman from pursuing his calling upon a Lot, if such artist, artisan or craftsman also uses the Lot for residential purposes, is self-employed, has no employees working on the Lot and does not advertise or offer any product or work of art for sale to the public upon or from such Lot; or
- (ii) the leasing of any lot from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

4.14.2 Occupancy of Residential Lot: The number of persons occupying a residence in the Residential Area shall not exceed two (2) persons per bedroom.

4.14.3 Restrictions on Further Subdivision: No Lot shall be further subdivided, nor shall less than all of any such Lot be conveyed by an Owner thereof. No easement or other interest in a Lot shall be given without the prior written approval of the Architectural Committee. The Owner of two or more contiguous Lots may apply to the Architectural Committee for permission to use such Lots as the site for a single Residence. Upon approval thereof by the Architectural Committee, which shall not unreasonably be withheld, a written consent to such use shall be executed by the Owner and by a majority of members of the Architectural Committee. The Owner thereafter may apply to the appropriate governmental agencies for approval of a consolidation of two or more Lots. Thereafter, the consolidated Lot shall not be resubdivided, but shall be considered as multiple Lots for all other purposes, including but not limited to, the calculation of assessments.

4.14.4 Rental of Lots: An Owner shall be entitled to rent the Residence situate on the Owner's Lot, provided that the term of said rental shall not be for a term less than thirty (30) days. Any rental or lease of a Residence shall be subject to this Declaration and the Rules established by the Board pursuant to Section 6.9 of this Declaration. Each tenant or lessee shall be provided with a copy of this Declaration and the Rules in effect from time to time by the Owner so renting or leasing. The Owner shall at all times be responsible for his or her tenant's or

lessee's compliance with all of the provisions of this Declaration and the Rules in effect from time to time regarding the occupancy and use of the Residence and Lot.

4.14.5 Improvements, Alterations and Repairs: No Improvement, repair, excavation, fill or other work which in any way alters the exterior appearance of any Lot or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to Owner shall be made or done without the prior written approval of the Architectural Committee, given pursuant to the terms of Article IX hereof, except as specifically authorized herein. All repairs, maintenance and care of the exterior surfaces of Residences and Lots shall be undertaken by the Owner in accordance with this Article IV and with standards established in the Architectural Committee Rules.

4.14.6 Temporary Occupancy: No trailer, recreational vehicle, tent, shack, garage, or temporary building or structure of any kind shall be used at any time for a Residence either temporary or permanent, nor shall any overnight camping be permitted on any Lot. Temporary buildings or structures used during the construction or improvement of a Residence shall be expressly approved by the Architectural Committee, shall be permitted to remain only for so long as the Architectural Committee may allow, and shall be removed immediately after such permission expires or the completion of construction whichever first occurs.

4.14.7 Animals: No animals of any kind shall be bred or kept in any Residence or Lot within the Residential Area, except that a reasonable number of dogs, cats, caged birds and fish of a type customarily kept as household pets may be kept, and, subject to further limitation by the Rules, such other animals as may be permitted by local ordinance may be kept; provided, however, that no animals shall be kept or maintained for any commercial purposes but shall be kept solely as household or yard pets or for recreational use by the Owner, his family, guests or tenants. No animal or fowl shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Except in any areas in the Project specifically authorized by the Association, no animal shall be permitted outside of the Lot of the Owner of said animal unless said animal is under the control of a responsible person by means of a leash or other reasonable restraint. The Association Rules may establish limitations on the number and type of animals which are to be kept on a Lot, provided that the Rules shall not discriminate against any Owner. In addition, the Board shall specifically have the right to prohibit the maintenance of any animal which, in the opinion of the Board, after notice and hearing, constitutes a nuisance to any Owner or Owners.

4.14.8 Structures for Animals: No structure for the care, housing or confinement of any animal shall be constructed or maintained except in accordance with the provisions of this Declaration.

4.14.9 Antennae: No antenna for reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors, whether attached to Improvements or otherwise. Transmission antennae shall not be permitted.

4.14.10 Utility Service: No lines, wires or other devices for the transmission of electric current or power of any kind, including but not limited to telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed and maintained pursuant to plans and specifications approved by the Architectural Committee. Specifically, all such lines, wires or other devices shall be concealed underground.

4.14.10.1 Storage Tanks: All storage tanks shall be fully screened from the view of Lot Owners and streets in a form approved by the Architectural Committee.

4.14.11 Vehicles: No vehicle which is not in good operating condition, boat, mobile home, recreational vehicle, motor home, trailer of any kind, truck camper (hereinafter collectively referred to as "motor vehicles"), shall be kept, placed, maintained, constructed, reconstructed or repaired upon any Lot or street within the Project in such a manner as will be visible from adjacent Lots or streets; provided, however, that the provision of this paragraph shall not apply to motor vehicle repairs in an Owner's garage when the garage door is closed. Without limitation to any other remedy set forth in this Declaration, the Association, by its agents, shall have the right to enter upon any Lot where any motor vehicle is being repaired or is being maintained which is not in good operating condition, and to remove such motor vehicle to a repair shop, or a storage yard and the Owner of the Lot shall be responsible for all costs involved (whether or not he or she is the owner of the motor vehicle) and shall pay to the Association all costs incurred, and the Association and its agents shall not be liable for trespass or for conversion or for any damages to such motor vehicle or for the taking of same.

4.14.12 Nuisances: No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to a Lot or Common Area, and no odors shall be permitted to arise therefrom, so as to render any Lot or portion thereof unsanitary,

unsightly, harmful, or detrimental to any of the property in the vicinity thereof or to the occupants thereof. No nuisance shall be permitted to exist or operate upon any Lot so as to be harmful or detrimental to any property in the vicinity thereof or to its occupants. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot; provided that all such security devices shall be designed and maintained such that they shall automatically cease audible signals after ten (10) minutes, in any one (1) hour period, whether intermittently or continuously, and all water facilities and systems shall be designed and maintained such that they shall not cause continuous or repeated flow of water from the Lot. Any such device which continuously or intermittently signals audibly for more than ten (10) minutes in any one hour period, and any water facility or system which causes continuous or repeated flow of water from the Lot, shall constitute a nuisance. Owners are encouraged to maintain security devices and systems which are connected to and monitored continuously by a professional security service; and in all events Owners shall be obligated to re-design or modify any existing security device to prevent violation of the ten (10) minute audible signal limit, and any water facility or system which causes continuous or repeated flow of water from the Lot, within sixty (60) days after the effective date of this provision. Should undue noise, water flow or other nuisance result from the operation of any air-conditioning system or swimming pool filtering pump unit or units, or irrigation system, then upon request of the Association, by its agents, the Owner expeditiously shall design additional soundproofing or other control methods and, upon approval of such methods by the Architectural Committee, the Owner shall proceed expeditiously with necessary adjustments.

4.14.13 Trash Containers and Collection: No garbage or trash shall be permitted on any Lot except in closed receptacles screened from view from any Lot or street, and no accumulated waste plant materials will be permitted on any Lot.

4.14.14 Clothes Drying Facilities: No outside clotheslines or other outside clothes drying or airing facilities shall be maintained except in an area adequately concealed so as not to be seen from a street or any Lot.

4.14.15 Walls and Fences: No fences, hedges or walls shall be erected or maintained on any Lot other than as are initially installed by Declarant unless first approved by the Architectural Committee in accordance with the procedures and standards for review of Improvements pursuant to Article IX of this Declaration.

The following wall and fence materials are recommended:

- (i) Concrete block with a plaster finish so long as it is an integral color or painted to be harmonious with the color of the Residence;
- (ii) Brick in earthtone colors;
- (iii) Concrete that has been textured, bush hammered, or sandblasted, painted or integral colored;
- (iv) Textured plaster so long as it is an integral color or painted to be harmonious with the color of the residence;
- (v) Stone;
- (vi) Wood;
- (vii) Combinations of wood and stone; and
- (viii) Wrought iron.

The following wall and fence materials are prohibited:

- (i) Chain-link fences or gates, except for tennis courts;
- (ii) Unpainted or uncolored gray concrete block;
- (iii) Open-slat wood; and
- (iv) Standard precision block.

4.14.16 Fires: There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed for such purpose.

4.14.17 Parking: Owners and tenants occupying a Residence shall at all times park their automobiles and other permitted vehicles in the garage or driveway. The Association Rules shall not permit parking under any circumstances (other than for a twenty-four (24) hour period in the event of emergency inoperability) of a vehicle on any unpaved area of a Lot.

4.14.18 Machinery and Equipment: No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot within a Residential Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of improvements. No machinery or equipment of any kind to be used in the construction of any Improvements shall be stored on any Lot more than thirty (30) days prior to the commencement of continuous and uninterrupted construction of any such Improvements nor more than thirty (30) days after substantial completion of such Improvements.

4.14.19 Diseases and Insects: No Owner shall permit any thing or condition to exist upon the Owner's Lot which may induce, breed, encourage or harbor diseases or noxious insects.

4.14.20 Storage: No open storage of furniture, fixtures, appliances and other goods and chattels will be permitted so as to be visible from any Lot or street.

4.14.21 Garage Sales. The Owner of a Lot shall not conduct, hold or permit to be held on the Owner's Lot more than one "garage sale" every six (6) months, any such "garage sale" to last no more than two (2) consecutive days.

4.14.22 Right of Entry: Upon forty-eight (48) hours written notice (emergencies excepted) and during reasonable hours, Declarant, any member of the Architectural Committee or the Board or any authorized representative of any of them shall have the right to enter upon any Lot and the Improvements thereon for the purpose of ascertaining whether the provisions of this Declaration and the Rules have been or are being complied with. Such person shall not be deemed guilty of trespass by reason of such entry.

4.14.23 View Channels: View Channels are indicated on an overall map of the subdivision on file with the Architectural Committee. No portion of any structure within the view channel area shall protrude more than ten (10) feet above existing grade. No trees, hedges or other plants within the view channel area shall be allowed to grow above the view plane of the Lot and shall, from time to time as necessary, be removed or trimmed by the Owner to conform to the view plane limit. Except for residential construction variances granted by the Architectural Committee, the area above the view plane shall constitute a view easement which shall be enforceable by the Board when any Owner's view is in fact impeded by a violation of the view plane easement area. It is to be noted that neither the Declarant nor the Association guarantees any unobstructed views.

4.14.24 Commencement of Construction: Option to Repurchase in Declarant: Hawaii Loa Ridge Subdivision is a residential development under which each Lot Owner shall construct his or her own residence and appurtenances pursuant to a general design scheme and procedure which will preserve the natural ambiance, environment and ecology of this unique real property. Each Lot Owner, as successor to Declarant under this Declaration, agrees as follows:

(i) Within five (5) years of the close of escrow conveying the Lot from Declarant to the original Owner, the Owner shall have obtained a valid building permit from the City and County of Honolulu based on plans approved by the Architectural Committee in accordance with the procedures set forth in Article IX, and shall have commenced "work" under the permit as that word is presently defined in the Building Code of the City and County of Honolulu;

(ii) If said permit is not obtained and work under the permit is not started on a Lot during said five (5) year period, then Declarant may, at its option, repurchase said Lot for the original purchase price paid to Declarant by the original Owner of said Lot, plus ten percent (10%) interest per annum on said purchase price from the date of closing of escrow conveying said Lot from Declarant to the original Owner to the date of closing of escrow on the repurchase of said Lot.

Declarant shall give the Owner written notice, by certified or registered mail, return receipt requested, of Declarant's intention to repurchase said Lot within sixty (60) days after the expiration of the aforesaid five (5) year period.

Within sixty (60) days after receipt of the aforesaid written notice, the Owner shall deposit into escrow any and all appropriate documents necessary to transfer the Owner's interest in the Lot to Declarant fully executed in accordance with the written instructions of Declarant in the aforesaid written notice, with instructions for escrow to deliver the document or documents transferring title to the Declarant upon payment of the aforesaid repurchase price.

The escrow shall be required to close within thirty (30) days after receipt by escrow of the transfer documents aforesaid.

Declarant shall have the option, in Declarant's sole and absolute discretion, to extend the time for commencement of work under this Section. Any extension of time granted by Declarant to any Owner shall not be construed as a waiver of Declarant's right to give the aforesaid written notice at any future time.

The provisions of this Subsection 4.14.24 shall not impair the rights of, be applicable to, or enforceable against an institutional lender that is a mortgagee of the Lot whether or not such mortgagee is in possession of the Lot. However, such mortgagee shall not be deemed impaired if the balance of the debt owed to it is paid to it.

The provisions of this Subsection 4.14.24 shall, however, apply to a purchaser of the Lot from the mortgagee from the date of such purchase.

4.15 EXTERIOR MAINTENANCE OF RESIDENCES: Each Owner shall be responsible for providing for the exterior maintenance of his Residence and all Improvements located on his Lot. Such exterior maintenance shall include the painting, repair, replacement and care of exterior building surfaces, roof surfaces, gutters, downspouts, glass surfaces and skylights of the improvements, and, in general, the maintenance of the exterior of such Improvements in good repair, first class condition and appearance. All such work shall be identical in materials, color scheme and workmanship to the work originally approved by the Architectural Committee, unless the alteration thereof is approved in advance by the Architectural Committee in accordance with the provisions of Article IX of this Declaration. The Rules and/or Architectural Committee Rules may impose more detailed standards for such exterior maintenance.

4.16 LANDSCAPING AND EXTERIOR MAINTENANCE OF LOTS: Each Owner shall be solely responsible for landscaping and maintaining the Owner's Lot.

4.16.1 Prior to construction of a residence, vacant Lots must be maintained at all times in good repair, clean condition and in such manner as not to cause a nuisance or create fire, safety or health hazards. Among other things, Lots must be free of trash and other debris, and must be landscaped, planted and, if necessary, irrigated in a manner which will prevent airborne dust, airborne weed seeds and other debris and nuisances, and which shall prevent any risk of damage or injury by flooding or erosion, or siltation or blockage of drainage facilities. All trees and other vegetation must be maintained or eradicated to prevent damage to sidewalks, roads, curbs, walls, fences and other structures outside of or adjacent to the Lot, and to ensure that free and convenient usage of sidewalks is not impaired or obstructed. All areas must be routinely maintained and be kept attractive in appearance and free of litter, and notwithstanding any foregoing provision to the potential or actual contrary, the View Channel restrictions must be complied with at all times.

4.16.2 At any time a Lot has inadequate ground cover or is cleared of ground cover incident to construction or otherwise, adequate measures must be instituted immediately and maintained at all times, including but not limited to sprinkling and/or terms as necessary, (a) to prevent nuisances, annoyance and damages from airborne dust and debris, and (b) to prevent any risk of damage or injury by flooding, erosion or siltation or blockage of drainage facilities.

4.16.3 The Owner shall, within ninety (90) days after substantial completion of the Residence, landscape the Lot in accordance with the approved plan and thereafter maintain said landscaping in a first class condition. Lots fronting on two streets shall be landscaped along both frontages.

4.16.4 Non-resident Owners shall be required to engage the services of a licensed landscape maintenance company and swimming pool maintenance company (if appropriate) to maintain the Owner's landscaping and swimming pool during such period of non-residency and deposit copies of current contracts with such companies with the Board or its designee. In order to ensure compliance, each non-resident Owner shall deposit \$5,000.00 with the Declarant at the time of purchase of a Lot, which may be used by Declarant to engage the services of an appropriate maintenance company or companies to maintain a non-resident Owner's landscaping or swimming pool if the non-resident Owner fails to do so within five (5) days after Declarant's written notice of a violation. Declarant may, but is not required to, transfer a non-resident Owner's deposit to the Association and after such transfer, the Association may provide the notice to the non-resident Owner required herein and use such funds. The non-resident Owner may request return of the deposit a reasonable time after final completion of construction of the Improvements, and installation of landscaping. The Association shall refund the unused portion of the deposit, if any, after making an inspection of the non-resident Owner's lot, if the Association determines, in its sole and absolute discretion, that the non-resident Owner is in compliance and has the capability of remaining in compliance. A non-resident Owner is someone who the Board, in its sole and absolute discretion, determines is not a full-time resident of the Island of Oahu, State of Hawaii.

4.16.5 All landscaping plans shall be prepared by a licensed landscape architect. The Owner shall install landscaping and irrigation systems on the Lot costing not less than seven percent (7%) of the cost of the Owner's Residence exclusive of costs for consultant's fees, swimming pools and retaining walls, which are not a part of the Residence foundation, appliances, interior furnishings, carpets and drapery or such other amount as

shall be approved in writing by the Architectural Committee. The Owner will, upon request, furnish to the Architectural Committee a written statement by the landscape architect or other party acceptable to the Architectural Committee certifying that, to the best of the Owner's knowledge and belief, the cost of the landscaping and irrigation systems will be at least seven percent (7%) of the cost as set forth above or such other amount as approved by the Architectural Committee and containing such data in reasonable detail as may be necessary to support such certification.

4.16.6 Every Owner shall install and maintain at all times a manicured hedge along all street frontage adjacent to his Lot which, at maturity, shall be not less than six (6) feet high. The following hedge materials are recommended: mock orange and privet.

4.17 OWNERS' EASEMENTS:

4.17.1 Reciprocal Appurtenant Utility Easements: Some Lots may be served by utilities which are located on or under another Lot or Lots. There are hereby created appurtenant easements for the use and benefit of the respective Lots served, as dominant tenements, on, under and across the Lots burdened thereby, as servient tenements, for ingress and egress for pedestrians and vehicles, utility, telephone, television, sewer and drainage pipes, water and sprinkler systems, lines, conduits and culverts and utility meters. The specific location of each such utility easement shall be determined by the physical location of the Improvements thereon and thereunder installed, constructed and completed at the time of the first conveyance of each respective servient tenement.

4.18 RESIDENTIAL AREA REPAIR AND RECONSTRUCTION: If any Improvements on a Lot are damaged or destroyed by fire or any other calamity, the Owner of said Lot shall rebuild or repair the damage to its original state or as otherwise approved by the Architectural Committee. In the event said Owner does not commence such rebuilding or repair within a reasonable time, which in no event shall exceed one (1) year from the occurrence of such damage or destruction, the Association may bring suit to compel the Owner to perform said rebuilding or repair.

4.19 VARIANCES: Individual solutions, at variance with the provisions of this Article IV, will be considered on their architectural merit and on their contribution to the objectives stated above. Such variances shall be specifically requested in writing by the Owner or his architect, and such request shall detail the reasons therefor.

ARTICLE V

PROPERTY RIGHTS: COMMON AREA

5.1 COMMON AREA OWNERSHIP: The Common Area shall be conveyed to and owned by the Association and the Association shall accept the conveyance of the Common Area transferred to it pursuant to this Section. Declarant shall transfer and convey to the Association and the Association shall accept the Common Area shown on the Subdivision Map and any easements created in favor of the Association thereby. Such Common Area shall be transferred by Declarant to the Association free and clear of all liens, restrictions and encumbrances, except the following:

5.1.1 This Declaration;

5.1.2 Then Lien of real property taxes and assessments not delinquent;

5.1.3 Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant or granted to any Owner for the use thereof in accordance with this Declaration;

5.1.4 Such easements and rights of way, over, under or across all or any part thereof as may be reserved to Declarant or granted to or for the benefit of any governmental agency or any other political subdivision or public organization or any public utility entity;

5.1.5 Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type which would at any time or from time to time create a lien upon such property to secure any obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of their Lots and the Common Area.

5.2 COMMON AREA MAINTENANCE: The Common Area shall be held, maintained and used to meet the common interests of the Members of the Association, their tenants and guests as provided by this Declaration.

5.2.1 Limitation on Construction: No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, shall make or create any excavation or fill upon or shall destroy or remove any tree, shrub or other vegetation upon any Common Area.

5.2.2 Maintenance by Association: The Association may at any time, and from time to time, as to any Common Area conveyed or transferred to it or under its jurisdiction:

5.2.2.1 Reconstruct, replace or refinish any Improvement or portion thereof upon such area in accordance with the original design, finish or standard of construction of such Improvement when such Common Area was conveyed by Declarant to the Association and which was approved by the Governmental entity having jurisdiction;

5.2.2.2 Construct, reconstruct, replace or refinish any road Improvement or surface upon any portion of such area used as a private road, street, walk or parking area;

5.2.2.3 Replace injured or diseased trees or other vegetation in any such area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

5.2.2.4 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

5.2.3 Damage or Destruction of Common Area: In the event of any damage or destruction to the Common Area or any of the Improvements located thereon, the Association shall immediately undertake to repair and reconstruct any such damage or destruction substantially in accordance with the original design or standard of construction of the damaged or destroyed Common Area or Improvement.

5.3 OWNERS' EASEMENTS OF ENJOYMENT IN COMMON AREA:

5.3.1 Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

5.3.1.1 The Board, after giving notice and an opportunity to be heard to an Owner, shall have the right to suspend the voting rights and right to use the Common Area by an Owner and the Owner's tenants and guests for any period during which any assessment against the Owner's Lot remains unpaid;

5.3.1.2 The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, or any assessment, maintenance

or other special district, for such purposes and subject to such conditions as may be agreed upon by the Owners. No such dedication or transfer shall be effective unless approved in writing by seventy-five percent (75%) of the total votes residing in all Members of the Association entitled to vote agreeing to such dedication or transfer;

5.3.1.3 There shall be no obstruction of any part of the Common Area and nothing shall be stored, kept or parked in the Common Area without the prior written consent of the Board. Each Owner shall avoid any damage to the Common Area and shall be responsible for replacing any damage or injury to the Common Area or its facilities caused by the Owner, the Owner's tenants or guests; and

5.3.1.4 Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any of the Common Area or Improvements thereon without prior written consent of the Board. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on the Common Area or its facilities or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area.

5.3.1.5 The Common Area in The Pointe shall be for the exclusive use of Lot Owners in The Pointe and at their sole cost and expense.

5.3.2 There is hereby reserved to Declarant, the Association and the Association's duly authorized agents and representatives such easements as are necessary (i) to perform the duties and obligations of the Association as are set forth in this Declaration, or in the By-Laws, the Articles, the Association Rules or the Architectural Committee Rules or (ii) for the Declarant to perform any additional work toward the development of any adjacent property.

5.3.3 Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual conveyance documents to Lots may, but shall not be required to, set forth said easements.

5.3.4 Notwithstanding anything herein expressly or implied to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the development of the Project.

5.4 DELEGATION OF RIGHT OF USE: Any Owner may delegate his rights of enjoyment in the Common Area and in the privileges of the Association to the members of the Owner's family who reside upon the Owner's Lot, to contract purchasers from such Owner, to any of the Owner's tenants who reside thereon under a leasehold interest and to the Owner's guests, subject, however, to the provisions of this Declaration and to the Articles, By-Laws, Rules and regulations of the Association. Nothing stated in this Declaration and no Rules adopted by the Association shall discriminate between Owners and tenants who occupy Residences in the Project. The rights and privileges of such persons are subject to suspension for the same reasons and in the same manner as this Declaration provides regarding the suspension of the rights and privileges of Owners in the Project. Upon request of the Association each Owner shall notify the Secretary of the Association in writing of the name of the family members, tenants, or contract purchasers or guests staying with the Owner who are so authorized to use the Common Area and of the relationship of such person to Owner.

5.5 RESTRICTION OF SEVERABILITY OF COMMON AREA: The interest of each Lot Owner in the use and benefit of the Common Area owned by the Association shall be appurtenant to the Lot owned by said Owner and shall not be sold, conveyed or otherwise transferred by said Lot Owner separately from the ownership interest in said Lot. Any sale, transfer or conveyance of such Lot shall operate to transfer the appurtenant right to use said Common area without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Area and the Improvements located thereon. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise or operation of law, for their own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for a judicial partition of any ownership interest in the Common Area of the Project and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

ARTICLE VI
THE ASSOCIATION

6.1 THE ORGANIZATION:

6.1.1 The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles, and its affairs shall be governed by this Declaration, its Articles and By-Laws.

6.1.2 Successor Association: In the event that the Association as a corporate entity is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated association shall be governed by the laws of the State of Hawaii and, to the extent not inconsistent therewith by the Articles and By-Laws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

6.2 MEMBERSHIP:

6.2.1 Classes of Members: The Association shall have two (2) classes of members: Class A Members and Class B Members.

6.2.1.1 Class A Members: Each Owner of a Lot, with the exception of Declarant, by virtue of being an Owner, shall be a Class A Member of the Association, or, in the event of its dissolution, a Class A Member of the unincorporated association succeeding to the Association, as provided for in Subsection 6.1.2. The membership shall be appurtenant to and may not be separate from the ownership of any Lot which is subject to assessment by the Association. Upon termination of Lot ownership, membership in the Association shall also terminate. Ownership of a Lot shall be the sole qualification for Association membership. The membership of an Owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot, and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer is void. Declarant shall become a Class A Member upon the occurrence of the events specified in Subsection 6.3.1.2.

6.2.1.2 Class B Members: The sole Class B Member shall be Declarant. Declarant shall hold one Class B membership for each Lot in the Project to which Declarant has title, until the occurrence of the events specified in Section 6.3.1.2.

6.2.2 Member's Rights and Duties: The rights, duties, privileges and obligations of all Members of the Association, or Members of the succeeding unincorporated association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration and the Charter, By-Laws and Rules of the Association.

6.2.3 Rights Upon Dissolution: In the event of the dissolution of the Association and the formation of an unincorporated association, as provided for in Subsection 6.1.2, each Member of the unincorporated association shall have an underlying beneficial interest in all of the property of the Association transferred to or for the account or benefit of said unincorporated association, such interest being in direct proportion to the number of Lots owned by such Member; provided, however, that there shall be no judicial partition of such property or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek judicial partition, the right to do so being expressly waived.

6.3 VOTING:

6.3.1 Members Entitled to Vote: Only Members of the Association shall be entitled to vote. The voting privileges of each class of Members shall be as provided herein. Any action by the Association which must have the approval of the Association membership before being undertaken shall expressly require the vote or written assent of a prescribed percentage of members as more particularly stated within the Declaration.

6.3.1.1 Class A Members: Class A Members shall have one (1) vote for each Lot owned. When more than one (1) person, corporation or other legal entity owns a single Lot all Owners shall be Members of the Association, and any such co-owner may cast the vote for such Lot. However, the vote for each Lot must be cast as an undivided unit and fractional votes shall not be allowed. When more than one co-owner seeks to vote for the same Lot or when a protest by one co-owner to voting by a different co-owner has been received, and such co-owners cannot unanimously agree upon how such vote shall be cast, such vote shall not be cast. The power to vote may be exercised by the Lot Owner's conservator, by the guardian of the Owner's estate, by the parent or parents of an Owner, in the case of the estate, by the personal

representative of a deceased record Lot Owner where the latter's interest in said property is subject to administration in the Owner's estate. A Class A Member who has sold his property to a contract purchaser under an agreement of sale shall be entitled to delegate to such contract purchaser his membership rights in the Association. However, the contract seller shall remain liable for all charges and assessments until title to the property sold is transferred.

6.3.1.2 Class B Member: The Class B Member shall be entitled to three (3) votes for each Lot in the Project to which it holds title, provided that the Class B membership shall cease and be converted to Class A membership upon the first to occur of the following events:

(i) When the votes outstanding in the Class A Membership equal the votes outstanding in the Class B membership; or

(ii) December 31, 1999.

6.3.2 Voting Procedures: Any vote may be cast by an Owner in person or by proxy. All proxies shall be in writing, dated, signed by the Owners and filed with the Board of Directors before the commencement of any meeting. No proxy shall extend beyond a period of eleven (11) months after the filing of such proxy with the Board. Every proxy shall automatically cease upon the sale of the Lot by the Owner, or upon the death or judicially declared mental incompetence of an Owner. When voting for the election of a Director or Directors, each Owner may cumulate the Owners' votes as provided in the By-Laws of the Association and the laws of the State of Hawaii. In any election in which the Owners other than Declarant do not have a sufficient percentage of voting power of the Association to elect at least one Director to the Board through cumulating all of the Owners' votes, the Association shall adopt special procedures to assure that at least one Director is elected solely by the votes of Owners excluding the votes of Declarant.

6.4 ASSESSMENTS AND DUES: Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of Article VII of this Declaration and shall be enforced pursuant to the provisions of Section 7.6 of this Declaration.

6.5 INITIAL BOARD OF DIRECTORS: The initial Board of Directors of the Association consisting of three (3) Directors shall be appointed by Declarant upon the incorporation of the Association and shall hold office until the first meeting of the Members, which shall be held within six (6) months after conveyance of the Common Area to the Association.

6.6 SUBSEQUENT BOARD OF DIRECTORS: At the first meeting of the Members, a new Board consisting of five (5) Directors shall be elected. Such Board shall serve until the annual meeting of the Association. At said annual meeting, and at each subsequent annual meeting, the Members of the Association shall elect a Board consisting of five (5) Directors who shall serve until the next annual meeting. Each such Director shall be an Owner and a Member of the Association, provided that at no time shall the Board of Directors consist of less than three (3) members. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the membership.

6.7 DUTIES OF THE ASSOCIATION: The Association shall have the obligations and duties, subject to and in accordance with this Declaration; to do and perform the following acts for the benefit of its Members and for the maintenance and improvement of the Project.

6.7.1 Members and Annexed Property: The Association shall accept all Lot Owners as Members; and shall accept, as part of The Hawaii Loa Ridge Subdivision or The Pointe at Hawaii Loa Ridge, as appropriate, all property annexed thereto, pursuant to Section 3.3.

6.7.2 Acceptance of Property by the Association: The Association shall accept title to all Common Area and other property from time to time conveyed to it, pursuant to Section 5.1. The Association may also acquire and accept title to any other property, real, personal or mixed, nothing herein to be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guests of the Improvements on the Common Area to help defray the costs of construction, maintenance, repair or operation of such Improvements owned by the Association.

6.7.3 Annual Membership Meetings: The Association shall hold an annual meeting of the Members within ninety (90) days after the end of each calendar year as provided by and in accordance with the By-Laws of the Association.

6.7.4 Common Area Maintenance: The Association shall maintain, or provide for the maintenance of, the Common Area, whether constituting an estate in land or an easement, and all Improvements of whatever kind and for whatever purpose located thereon. In reference thereto, with the consent of two-thirds (2/3) of the Members entitled to vote, the Association may construct capital improvements in the Common Area and assess the Owners for the costs thereof, as provided in Article VII hereof.

6.7.5 Operation of Common Area: The Association shall operate and maintain, or provide for the operation and maintenance of, the Common Area as such is conveyed or otherwise transferred to the Association. The Association shall keep all Improvements of whatever kind and for whatever purpose from time to time located on the Common Area in good order and repair.

6.7.6 Title to property Upon Dissolution: Immediately prior to any dissolution of the Association as a corporate entity, the Association shall convey to an independent institutional corporate trustee all Common Area vested in it to hold same in trust for the benefit of the unincorporated association formed pursuant to Subsection 6.1.2 and for the benefit of the Owners pursuant to the terms hereof and the Charter and By-Laws of the Association.

6.7.7 Payment of Taxes: The Association shall have the authority to pay all real property taxes and assessments levied upon any property conveyed or otherwise transferred to it, to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that any such taxes are paid or that a bond insuring the payment is posted prior to the sale of other disposition of any property to satisfy the payment of such taxes.

6.7.8 Insurance: The Association shall have the authority and duty to obtain and maintain in force the following policies of insurance:

6.7.8.1 Fire and Property Damage Insurance: Fire and Property Damage and extended coverage insurance on the Common Area and all Improvements on the Common Area for the full insurable replacement cost thereof, and such other hazard insurance as the Association may deem appropriate. The Association shall also insure any property owned by the Association, whether real or

personal, against loss or damage by fire and such other hazards as the Board may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as hereinafter provided.

6.7.8.2 Public Liability Insurance: The Association shall have the power to and shall obtain comprehensive public liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for one occurrence, FIVE HUNDRED THOUSAND DOLLARS (\$500,00.00) for injuries to one person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for property damage insuring against liability for bodily injury and property damage arising from the activities of the Association or with respect to the Common Area or other property under its jurisdiction. The policy limits set forth herein may be changed by the Board of Directors when it deems it advisable and prudent for the best interest of the Association and its Members. The liability insurance referred to herein shall name, as separately protected insureds, Declarant, the Association, the Board, the Architectural Committee, their representatives, members and employees and the Members of the Association (as a class) with respect to any liability arising out of the maintenance and use of any Common Area under the jurisdiction of the Association. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated therein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained, pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against the Declarant, its representatives and employees, and any Owner.

6.7.8.3 Fidelity Bonds: The Association shall have the duty to obtain faithful performance and fidelity bonds to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of the funds or other property of the Association.

6.7.8.4 Other Insurance: The Association shall have the duty to obtain other insurance, including workmen's compensation insurance, errors and omissions insurance and indemnity and other bonds, as its Board shall deem necessary or expedient to carry out its functions as set forth in this Declaration, the Charter and By-Laws.

6.7.8.5 Premiums: Premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association.

6.7.8.6 Review: The Board shall review the limits of all insurance policies of the Association at least once a year, and change said limits as the Board deems necessary or appropriate.

6.7.9 Rule Making: The Association shall have the duty to make, establish, promulgate, amend and repeal the Rules as provided in Section 6.9.

6.7.10 Architectural Committee: Subject to the provisions of Section 9.2, the Association shall have the duty to appoint and remove members of the Architectural Committee and to insure that at all reasonable times there is available a duly constituted and appointed Architectural Committee.

6.7.11 Enforcement of Restrictions and Rules: The Association shall have the duty to take such other action, whether or not expressly authorized by these restrictions, including the hiring of legal counsel and undertaking legal action, as may be reasonably necessary to enforce the covenants, conditions and restrictions contained herein, the Rules and the Architectural Committee Rules.

6.7.12 Accounting Statements: The Board shall prepare an annual operating statement and balance sheet reflecting income and expenditures of the Association for each fiscal year. Within ninety (90) days from the last day of the month closest in time to six (6) months from the date of conveyance of the Common Area to the Association, the Board shall prepare a balance sheet and operating statement of the Association for said period. The operating statement for said period shall include a schedule of assessments received or receivable itemized by Lot number and name of the assessed person and entity. Thereafter, the Association shall prepare a balance sheet as of the last day of the Association's fiscal year.

6.7.13 Other: The Association shall carry out the duties of the Association as set forth in other sections of this Declaration, the Charter and By-Laws.

6.8 POWERS AND AUTHORITY OF THE ASSOCIATION: The Association shall have all of the powers of a nonprofit corporation organized under the laws of the State of Hawaii in operating for the benefit of its Members, subject only to such limitations upon

the exercise of such powers as are expressly set forth in the Charter, By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of said restrictions, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. Without in any way limiting the generality of the foregoing, the Association and the Board shall have the following powers and authority.

6.8.1 Right of Entry and Enforcement: The Board and the Association's employees, and their agents and representatives shall have the power and right at any time and from time to time and without liability to any Owner or Owners, tenant(s), occupant(s) or other person(s) for trespass, damage or otherwise, to enter upon any Lot and improvements thereon in the Residential Area to enforce any of the provisions of this Declaration, to abate any nuisance or to maintain and repair the Improvements located on said Lot either as provided in this Declaration or if for any reason whatsoever the Owner thereof fails to maintain and repair any portion of a Lot as required by said Declaration. No such entry shall be made until the Board gives the Owner of the Lot a minimum of twenty-four (24) hours written notice and an opportunity for a hearing before the Board regarding any alleged failure to so maintain and repair; provided that in the event of emergency, or of a nuisance of a pervasive or intrusive nature which materially affects the tranquility, peace or quiet enjoyment of the occupant of any other Lot, or of continuing damage or risk or threat of damage to property, then only efforts which are reasonable in the circumstances need be exerted to provide oral notice and demand for abatement or correction, prior to such entry and abatement or corrective actions. The Association shall also have the power and authority, either in its own name, on its own behalf or on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach to this Declaration or the Rules and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration or the Rules. The costs of any such action or suit, including reasonable attorney's fees, shall be paid to the prevailing party.

6.8.2 Easements and Rights of Way: The Association shall have the power to grant and convey to any third party for reasonable compensation and on such other terms as the Board may approve such easements, licenses for use and rights of way in, on, over or under any Common Area which has either been conveyed or otherwise transferred to the Association or which is

under its jurisdiction upon the affirmative vote or written consent of two-thirds (2/3) of the Members entitled to vote.

6.8.3 Employment of Manager: The Board shall have the power to employ the services of a manager or other employee, or a professional manager or management company, subject to the direction and control of the Board, to manage and carry out the affairs of the Association and, to the extent not inconsistent with the Laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the manager any of its powers; provided, however, that, although a management agreement may be renewable by agreement of the parties for successive one (1) year periods, in no event shall any management agreement be for a term greater than one (1) year, and that said agreement shall provide for termination for cause on a maximum of thirty (30) days written notice, provided, however, that the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of FIVE THOUSAND DOLLARS (\$5,000.00) or for the performance of any work or services which work or services are not to be completed within sixty (60) days, nor the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.

6.8.4 Services: The Board shall have the power to provide for, or engage the services of others, including grounds keepers, painters and other maintenance personnel, to provide for the maintenance, protection and preservation of the Common Area as the nature and character of the Common Area, including the Improvements, if any, may require; provided, however, that no contract for such services shall be for a duration of more than one (1) year unless approved by a majority of the Members of the Association, and that in no event shall such contract be for a term greater than three (3) years. Said contract shall provided for termination for cause on maximum of ninety (90) days written notice.

6.8.5 Professional Services: The Board shall have the power to contract and pay for, or otherwise provide for the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem necessary.

6.8.6 Utilities: The Board shall have the power to contract, use and pay for utility services to the Common Area and its Improvements; provided, however, that any such contract shall not exceed the shortest term for which the supplier will contract at the regular rate.

6.8.7 Other Property: The Board shall have the power to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by same or otherwise.

6.8.8 Dedication: The Association shall have the power to dedicate any of its property to an appropriate public authority for public use, provided that any such dedication shall have the approval either by affirmative vote or written consent of two-thirds (2/3) of the Members entitled to vote.

6.8.9 Maintenance of Project: The Board shall have the power to use the operating fund of the Association for the maintenance, repair, care, preservation and painting of Common Area Improvements in the Project as required by Section 6.7 and elsewhere in this Declaration, and to pay and discharge all liens arising out of any such work. Said operating fund may also be used to pay for the purchase of such equipment, tools, supplies and other personal property as the Board deems necessary for use in such maintenance repair.

6.8.10 Sale or Exchange of Property: The Association shall have the power to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve, any portion or portions of the Common Area, with Improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the Owners, and to borrow money, without limit as the amount, for any purpose within the powers and authority of the Association and to secure the same by a mortgage of the Common Area then owned by the Association, or any part thereof, provided, however, that no such exchange, sale or other disposition of any real property and no such borrowing and mortgaging shall be made unless the same shall have been approved by an affirmative vote of not less than two-thirds (2/3) of the Members entitled to vote and who may vote in person or by proxy at a meeting of the Association duly called, the notice for which shall have described the real property to be sold or otherwise disposed of, or the amount of the borrowing and the security to be mortgaged and shall have given the reasons therefor.

6.8.11 Delegation: The Board may delegate such powers to any such committees, officers or employees as it deems necessary and proper, except as otherwise expressly provided herein.

6.9 PROJECT RULES:

6.9.1 Rulemaking Power: Subject to the provisions of this Declaration, the Board may from time to time propose, enact, amend and repeal Rules to be known as the "The Pointe at Hawaii Loa Ridge Rules" and/or "Hawaii Loa Ridge Subdivision Rules", as appropriate. The Rules may concern, but need not be limited to, matters pertaining to use and operation of the Common Area and Improvements thereon. The Rules may additionally concern matters as to activities undertaken on the exterior areas of Lots, including signs; collection and disposal of refuse; minimum standards of maintenance of property; parking and traffic restrictions; standards and limitations on maintenance of landscaping or other Improvements on any property which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic; and any other subject or matter within the jurisdiction of the Association as provided in this Declaration; provided, however, that any Rule which does not relate to the use and operation of the Common Area and Improvements thereon shall become effective only after approval by Lot Owners representing fifty-one percent (51%) of the Members entitled to vote in the Association at a meeting duly called for that purpose or by the written consent of said number of Lot Owners appended to a copy of said Rule. No Rule shall restrict or abridge, whether directly or indirectly, the right of an Owner to sell or lease the Owner's Lot. Rules may restrict and govern the use of Common Area and its Improvements by any Member, by the family of such Member, or by any guests, tenants or lessees of such Member; provided, however, that there shall be no distinction or discrimination in any such Rules between tenants or lessees of Members occupying Residences and Owners who occupy Residences.

6.9.2 Distribution of Rules: A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be filed in and available at all times at the office of the Association or with the Secretary of the Association and copies thereof shall be mailed or otherwise delivered to each Member. No Rules may be adopted which materially affect the rights, preferences or privileges of any Owner as specifically set forth herein. Where the provisions of this Declaration and any Rule adopted by the Association are in conflict, the provisions of this Declaration shall be deemed to prevail. Failure to deliver to any Owner a copy of any Rule, amendment of a Rule, or notice of repeal of a Rule shall not render such Rule, amendment or repeal invalid.

6.9.3 Amendment of Rules: Any Rules adopted by the Board may be amended from time to time by the Board by majority vote thereof; provided, however, that any vote which requires a

fifty-one percent (51%) vote of the Members entitled to vote shall require the same percentage vote for the amendment thereof. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the Rules shall become effective thirty (30) days from the date of adoption thereof by the Board, and ratification thereof by the Members, if so required, or at such later date as the Board may deem appropriate upon its adoption of said amendment to the Rules.

6.10 BREACH OF RULES OR REGULATIONS: In the event of a breach of any Rule, or of any of the restrictions contained in this Declaration, the Charter or By-Laws, by a Lot Owner, or such Owner's family, guests, employees, invitees, licensees, tenants, contractors, subcontractors or delivery persons, the Board, for and on behalf of all other Lot Owners, shall enforce the obligations of each Owner to obey, or the Owner's obligation to compel their family, guests, employees, invitees, licensees, tenants, contractors, subcontractors and delivery persons to obey, such Rules or restrictions of this Declaration in any manner provided by law or in equity, including but not limited to appropriate hiring of legal counsel, the pursuing of legal action, suspension of the Owner's right to use the Common Area Improvements of the Project or suspension of the Owner's voting rights; provided, however, that such suspension may not be for a period in excess of thirty (30) days after the infraction ceases, after notice and hearing as herein provided, for an infraction of such Rules. In addition to the other rights and remedies of the Association, the Board, by majority vote, may levy a fine or fines against such Owner, after appropriate notice and hearing as herein provided, in an amount for each such violation as imposed pursuant to the Rules. Each such fine or fines shall be payable immediately upon being effective. The Owner shall be jointly and severally liable for fines imposed respecting violations by their family, guests, employees, invitees, licensees, tenants, contractors, subcontractors and delivery persons, and the payment of such fine or fines may be enforced in the same manner as set forth in Section 7.6 hereof. Prior to imposing any penalty provided herein for breach of any Rules enacted hereunder or restrictions contained in this Declaration, the Board shall send written notice to the Lot Owner specifying the nature of the infraction and provide an opportunity to the Lot Owner to a hearing before the Board regarding such infraction and the penalty to be imposed, as may be established pursuant to the Rules. In the event that the Board determines that said infraction has occurred and that a penalty shall be imposed, after a reasonable opportunity for a hearing has been provided, the determination of the Board shall be final. In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to

judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

6.10.1 Responsibilities of Owners: Each Owner shall be jointly and severally responsible to the Association for the conduct of such Owner's family members, tenants, renters, guests, employees, invitees, licensees, contractors, subcontractors or delivery persons, and shall, upon request of the Board or managing agent, immediately abate and remove, at the Owner's expense, any structure, thing or condition that may exist with regard to the occupancy of the Owner's Lot by the Owner's family members, tenants, renters, guests, employees, invitees, licensees, contractors, subcontractors or delivery persons, which is a violation hereof, or of this Declaration, or of any Rules, or, if the Owner is unable to control the conduct of the Owner's family members, tenants, renters, guests, employees, invitees, licensees, contractors, subcontractors or delivery persons, then the Owner shall, upon request of the Board or its designee, immediately remove such family members, tenants, renters, guests, employees, invitees, licensees, contractors, subcontractors or delivery persons from the premises, without compensation for lost rentals or any other loss or damage resulting therefrom.

6.11 LIABILITY OF MEMBERS OF BOARD: No member of the Board shall be personally liable to any of its members or to any other person, including Declarant, for any error or omission of the Association, its representatives, employees, the Architectural Committee, or the manager provided that such Board Member has, upon the basis of such information as may be possessed by the Board Member, acted in good faith.

ARTICLE VII

FUNDS AND ASSESSMENTS

7.1 OPERATING FUND: The Association shall maintain an Operating Fund into which the Board shall deposit all monies received by the Association as maintenance and operation assessments, miscellaneous fines, fees and income and profits attributable to the operating funds. Said funds shall be held in trust by the Association for the use and benefit of its individual Members and shall only be used for and applied to the common specific purposes of the Members as herein set forth.

7.2 MAINTENANCE AND OPERATION ASSESSMENTS:

7.2.1 Regular Assessments: Prior to the first day of the month following the conveyance of the Common Area to the Association, the Board shall estimate the total charges to be paid out of the maintenance fund, including a reasonable reserve for contingencies and replacements not to exceed twenty-five percent (25%) of the regular operating expenses for the immediately preceding year (except in the first year, for which a reasonable estimate for reserves shall be made), for the remainder of the fiscal year and shall assess said charges pro rata to all Lot Owners, including Declarant, based on the number of Lots owned. Regular assessments against all Lots in the Project shall commence on the first day of the month following the conveyance of the Common Area to the Association. Thereafter, not later than within thirty (30) days prior to the beginning of each subsequent fiscal year, the Board shall estimate the total charges to be paid out of the maintenance fund during such year, including the aforementioned reserve and less any expected surplus from the prior year. The Board shall allocate and assess said estimate of total charges to each Lot Owner equally by dividing said estimate by the number of Lots then contained in the Project and multiplying the resulting quotient by the number of Lots owned by each Lot Owner. All funds of the Association shall be budgeted, allocated, assessed and collected for current maintenance and operation of the Project, contingencies, deferred maintenance and replacement of Common Area Improvements and shall be designated for those specific purposes. Said funds shall be used solely for the specific purposes for which said funds have been designated.

7.2.2 Increase in Annual Assessments: From and after January 1 of the year immediately following the conveyance of the Common Area to the Association, the annual assessment may be increased in any subsequent year by not more than twenty percent (20%) above the maximum assessment for the previous year. Any

increase in the maximum amount of the annual assessment prospectively for any period in excess of said twenty percent (20%) shall require the assent of a majority of the Members entitled to vote, either by vote at a meeting of Members or by written assent delivered to the Secretary of the Association.

7.2.3 Time and Manner of Payment of Assessments: Assessments shall be due and payable by the Owners to the Association during the fiscal year in equal semi-annual installments, on or before the first day of each January and July or in such other manner as the Board shall designate. If assessments or other sums due are not paid within thirty (30) days after the due date, each such assessment or other sum due shall incur a late charge each month or portion thereof from the original due date until paid, in an amount as shall be established by the Board from time to time. If any suit or action is brought to collect any such assessment or other sum due, there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment in any such suit or action.

7.3 REIMBURSEMENT ASSESSMENT: The Board shall levy an assessment against any Owner whose failure to comply with this Declaration, the Rules or the Architectural Committee Rules results in monies being expended by the Association from the Operating Fund in performing its functions under this Declaration. Such assessments shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended and the fine assessed, if any, and both shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, engineers', architects', attorneys', and accountants' fees when reasonably incurred by the Association.

7.4 CAPITAL IMPROVEMENT FUND: The Board shall maintain a Capital Improvement Fund, into which it shall deposit all monies paid to it as capital improvement assessments. Said funds shall be deemed to be contributions to the capital account of the Association by the Members and shall be so reflected on its books.

The Board shall make disbursements from said Capital Improvement Fund as required in the performance of the functions for which the capital improvement assessments are levied.

7.5 CAPITAL IMPROVEMENT ASSESSMENT:

7.5.1 Upon approval of a proposed capital improvement and the estimated total cost thereof, pursuant to Subsection 8.1.3, by two-thirds (2/3) of the Members entitled to vote, such estimated total cost shall be assessed to all Members in the manner set forth in Subsection 7.2.1 above.

7.5.2 If at any time and from and from time to time a capital improvement assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, without obtaining any further approval from the Owners, levy a further capital improvement assessment in the amount of such actual or estimated inadequacy to be assessed to all such Owners in equal amounts, but, without any fiscal year, the aggregate of such additional assessments shall not exceed five percent (5%) of the capital improvements budget. The Board may levy an additional assessment in excess of said five percent (5%) of the capital improvements budget only upon the affirmative vote or written consent two-thirds (2/3) of the Members entitled to vote.

7.5.3 Capital improvement assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

7.6 DEFAULT IN PAYMENT OF CHARGES:

7.6.1 The assessments levied by the Board on behalf of the Association under this Article VII shall constitute separate assessments. Each assessment levied under this Article VII, and each and every other sum payable to the Association pursuant to this Declaration or the Rules including but not limited to fines, interest (if imposed), costs and reasonable attorneys' fees (in this Declaration sometimes referred to as "other sums"), shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and shall bind the Owner's heirs, devisees, personal representatives, successors and assigns. Each assessment levied under this Article VII and each such other sum shall also be a charge on the land and shall be an automatic and continuing lien upon the property against which such assessment is made or to which such other sum applies. The Association shall have a separate lien and a separate lien is hereby created upon each Lot against which an assessment is made or to which such other sum applies to secure the payment of any assessments under this Article and such other sums. The priority of all such liens on each Lot shall be in inverse order, so that upon the foreclosure of the lien for any particular assessment or other sum on any Lot, any such sale of such Lot pursuant to such

foreclosure will be made subject to all liens securing the respective assessment or other sum on such Lot. Each such lien shall likewise secure interest (if imposed) if the same is not paid when due, and shall likewise secure costs of suit and reasonable attorneys' fees to be fixed by the court in the event any action or suit is brought to collect such charge.

7.6.2 The Board shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Lot, and such certificate shall be conclusive upon the Association and the Owners, in favor of all persons who rely thereon in good faith, as to the amount of such indebtedness on the date of the certificate. The Board shall furnish a copy of such certificate to any Owner upon request. A reasonable fee, as determined by the Board from time to time, may be charged for the preparation of such statement.

7.6.3 Prior to the transfer of the Common Area to the Association, Declarant shall pay all of the costs of operation and maintenance of the Common Area and Improvements that are incurred or expended. After the transfer of the Common Area to the Association, Declarant hereby covenants for each Lot owned within the Project, and each Owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association each assessment under this Article VII, such assessments to be fixed, established and collected from time to time as herein provided.

7.6.4 Owners of any Lot subject to these Restrictions, by acceptance of a deed or other conveyance therefore, whether from Declarant or subsequent Owners of Lots, shall become personally obligated and agree to pay such charges that accrue after receiving title thereto, plus costs of suit and reasonable attorneys' fees as above provided, and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges, costs of suit and attorneys' fees and for the enforcement of such liens. Such right and power shall continue in the Association and such obligations shall run with the land so that the successive Owner or Owners of record of any Lot within the Project shall in turn become liable to pay all such charges which shall become a lien thereon during the time they are the record Owner of such Lot within the Project. After a record Owner transfers of record any Lot owned by Owner, Owner shall not be liable for any charges thereafter to accrue against such Lot. Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer. A contract seller of any Lot shall continue to be liable for all such charges until a conveyance of such property is filed in the Bureau of

Conveyances and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as the case may be.

7.6.5 The lien provided for under this Article VII shall be subordinate to the lien of any mortgage hereafter placed upon the Lots subject to such lien; provided, however, that such subordination shall apply only to the assessments or other sums which have become due and payable prior to the sale of such property pursuant to (a) a decree of foreclosure of any such mortgage, or (b) pursuant to a power of sale provided in such mortgage if such mortgage under which the power of sale is being exercised was recorded at any time prior to the expiration of sixty (60) days after the recordation of this Declaration. Such foreclosure sale shall not relieve such Lots from liability for any assessments or other sums thereafter becoming due, nor from the lien of any such subsequent assessment or other sums.

7.6.6 Any assessment and other sums due the Association that are not paid within thirty (30) days after the due date shall be deemed to be in default, and the Board, on behalf of the Association, in addition to every other right or remedy of the Association may file or record a notice of lien, or bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or any combination thereof in the Board's discretion. No action shall be brought to foreclose the lien securing any assessment or other sums due the Association less than thirty (30) days following the mailing of a notice of delinquency or default to the Owner of such Lot. Any notice of lien shall state the amount of the assessment or other sums due, together with the interest (if such shall have been imposed), costs and reasonable attorneys' fees, a description of the Lot against which the same has been assessed and the name or names of the record Owner or Owners thereof. Upon or after default, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Lot Owner due and payable, and further may impose interest on each such assessment and other sum at the rate of twelve percent (12%) per annum which thereupon shall be deemed to have accrued from the date each such assessment and other sum originally shall have been due, which total sum and/or interest may then be included in any suit, action or proceeding brought to collect said sum, including all costs, charges and attorneys' fees.

7.6.7 Each of the Owners does hereby appoint the Association to enforce and to foreclose such lien in like manner as a mortgage of real property, and does further grant to the Board on behalf of the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof, for lawful money of

the United States, to the highest bidder to satisfy said lien. The Board, as trustee for the remaining Owners, or any other Owner, may purchase at said sale. The foregoing remedies shall be in addition to all other remedies provided by law for the enforcement of such assessment obligation.

7.6.8 Upon payment of the delinquent assessment or fine, or the satisfaction thereof, the Board shall cause to be recorded in the same manner as the notice of default a further certificate stating the satisfaction and release of the lien thereof.

7.6.9 In the event any Owner fails to pay any assessments or fines when due, and upon the decision of the Board, such Owner may be denied the privilege of using or enjoying any of the Common Area or its Improvements until such Owner has paid all delinquent assessments.

7.6.10 If the Owner rents or leases a Lot and defaults for a period of thirty (30) days or more in the payment of any assessment or other sum due the Association, then in addition to every other right and remedy of the Association, the Board may demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") or agent of the Owner, the rent due or becoming due from such lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, and any such payment of such rent to the Board by the lessee or agent shall be sufficient and complete discharge of the obligations and liabilities of such lessee and/or agent to the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee or agent shall not be deemed to be a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights, remedies or duties hereunder. In the event that the Board makes demand upon the lessee or agent as aforesaid, the lessee or agent shall not have the right to question or contest the right of the Board to make such demand or receive the sum demanded, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid; provided, however, that the Board may not exercise this right if a receiver and/or foreclosure commissioner has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

7.7 ASSOCIATION FUNDS: The assessments or fines collected by the Association shall be properly deposited into four separate accounts with a savings and loan association or bank selected by the Board, which accounts shall be clearly designated as either the HAWAII LOA RIDGE SUBDIVISION or THE POINTE CURRENT

MAINTENANCE AND OPERATION ACCOUNT and either the HAWAII LOA RIDGE SUBDIVISION or THE POINTE CAPITAL IMPROVEMENT ACCOUNT, as appropriate. The assessments collected by the Association shall be held in trust by the Association for and on behalf of each Lot Owner and shall be used solely for the operation, care and maintenance of the Common Area as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Common Area as specified in the annual budget and a portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Common Area, as specified in the annual budget. Said funds shall be deposited, as allocated, into the appropriate accounts and said accounts shall be separately maintained by the Association. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the trust funds shall be deemed automatically transferred to the successor transferee of such Owner. In the event that the Board retains a professional management agent, the Board may delegate the authority to deposit or withdraw funds to responsible representatives of the professional management agent so retained. Said professional management agent may additionally be authorized to establish a common trustee account for deposit of assessments as collected. Any funds deposited into such a common trustee account shall be allocated as previously specified herein.

7.8 FAILURE TO FIX MAINTENANCE ASSESSMENTS: The omission by the Board to fix the maintenance assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

7.9 PARTIES EXEMPT FROM ASSESSMENTS: Anything herein to the contrary notwithstanding it is understood that the following parties and their Lots shall be exempt in whole or in part from assessments under this Article VII as follows:

7.9.1 The Association shall be wholly exempt.

7.9.2 Declarant shall be exempt to the extent of sixty-five percent (65%) of the assessment per Lot for each Lot owned by it, until such time as such Lot or Lots are sold.

ARTICLE VIII

CAPITAL IMPROVEMENTS

8.1 PETITION; ASSOCIATION APPROVAL:

8.1.1 A majority of the Owners may petition the Association for the construction, installation or acquisition of a capital improvement on the Common Area. Such petition shall be in writing and in such form and contain such information as the Board may require, including, without limitation, preliminary plans and cost estimates. The Board, on its own motion, may move for the construction, installation or acquisition of a capital improvement, in which case such motion shall be treated as if it were a petition duly submitted by an Owner.

8.1.2 The Board shall approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area by the Lot Owners, subject, however, to the provisions of this Declaration.

8.1.3 Upon the approval of such petition by the Board, the Board shall obtain firm bids on the total cost of constructing, installing or acquiring the proposed capital improvement. The lowest acceptable bid or bids shall be deemed the estimated total cost of such capital improvements.

8.2 OWNER APPROVAL: If the estimated total cost of the proposed capital improvement exceeds an amount equal to five percent (5%) of the total capital improvements budget of the Association for the most recent fiscal year, the Board shall present the proposed capital improvement and the estimated total cost thereof to all Owners. Said improvements shall be deemed approved if two-thirds (2/3) of the Members entitled to vote approve such capital improvement.

8.3 CONSTRUCTION OF IMPROVEMENT: After the levy of the capital improvement assessment pursuant to Section 7.5, and at such time and upon such terms and conditions as the Association may deem appropriate, but not exceeding the estimated total cost of such capital improvement determined pursuant to Subsection 8.1.3 above, the Board shall cause to be constructed, installed or acquired, or contract for the construction, installation or acquisition of, the proposed capital improvement. The Board shall establish a capital improvements account in a bank or savings and loan association selected by the Board in which the capital improvement assessments shall be deposited, separate and apart from all other funds collected by the Association.

ARTICLE IX

ARCHITECTURAL COMMITTEE

9.1 ORGANIZATION: There shall be an Architectural Committee consisting of five (5) persons.

9.2 DESIGNATION OF MEMBERS AND TERMS OF OFFICE:

9.2.1 Initial Members: The initial members of the Architectural Committee shall be appointed by Declarant. At all times, at least two (2) members of the Architectural Committee shall be architects licensed to practice architecture in the State of Hawaii in accordance with the requirement of Chapter 464, Hawaii Revised Statutes and one of such architects shall be a landscape architect. No other member shall be required to meet any qualifications for membership on the Architectural Committee, except that any member other than an architect member or the members appointed by Declarant shall also be an Owner.

9.2.2 Terms of Office: Each member aforesaid shall hold office until such time as such member has resigned or has been removed or such member's successor has been appointed, as set forth herein.

9.2.3 Appointment and Removal: Until such time as the Lot Owners other than Declarant own ninety percent (90%) or more of the Lots within The Pointe, the right to appoint and remove all members of the Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association. When Declarant waives or no longer has the right to appoint and remove the members of the Committee, said right shall be vested solely in the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the Minutes of the Association of each new Architectural Committee member appointed and each member replaced or removed from the Architectural Committee.

9.2.4 Resignations: Any member of the Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint members.

9.2.5 Vacancies: Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint members.

9.3 DUTIES: It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms thereof, to adopt Architectural Committee Rules, to perform such other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.

9.4 MEETINGS: The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. A quorum of the Architectural Committee shall consist of three (3) members one of whom shall be an architect member. In the absence of a quorum the Architectural Committee shall act in accordance with the procedures set forth in Section 9.13. The vote or written consent of a majority of members present shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration; provided, however, that at least one (1) member of the majority is an architect member of the Architectural Committee. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Committee function and the architectural members shall in addition receive reasonable fees for professional services rendered. Such fees shall be charged by the Architectural Committee function and shall be provided for in the rules promulgated pursuant to Section 9.5; except that no fees shall be charged the Association, except as provided in Section 9.6.1.1.

9.5 ARCHITECTURAL COMMITTEE RULES: The Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations which may be known as "Architectural Committee Rules", provided that such Rules may be promulgated or stated as a part of the Association Rules adopted pursuant to Section 6.9. Said Rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; and governing the conduct of and imposing restrictions upon construction, deliveries, contractors, subcontractors and materialmen; and may impose such charges and require such deposits as the Architectural Committee reasonably deems appropriate to defray the costs of review, approvals and inspections, and to secure compliance with this Declaration, the Association Rules and the Architectural Committee Rules by Owners, contractors, subcontractors and materialmen; provided, however, that said Rules shall not be in derogation of the minimum standards required by

this Declaration. A copy of the Architectural Committee Rules, as they may from time to time be adopted, amended or repealed, certified by an architect member of the Architectural Committee, shall be kept available at all times at the office of the Association and at the office of Declarant, for the inspection of any Owner, architect, contractor, subcontractor, materialmen or agent of or for the Owner or architect.

9.6 DESIGN REVIEW APPLICATIONS:

9.6.1 Except to the extent permitted by subsection 9.6.4 below, any construction or reconstruction of, or the refinishing or alteration of any part of the exterior of, any Improvements upon any Lot is absolutely prohibited until and unless the Owner of such Lot first obtains the approval therefor from the Architectural Committee and otherwise complies with all of the provisions of this Declaration. The Association may either levy a fine or fines as provided in Section 6.10 and/or remove any Improvements constructed, reconstructed, refinished, altered or maintained in violation of this paragraph and the Owner thereof, shall reimburse the Association for all expenses incurred in connection therewith. Any Owner proposing to construct or reconstruct, or to refinish or alter any part of the exterior of, any Improvements on or within his Lot, or to perform any work which under this Section requires the prior approval of the Architectural Committee, shall apply to the Architectural Committee for approval as follows:

9.6.1.1 The Owner shall notify the Architectural Committee of the nature of the proposed work, and the Architectural Committee shall thereupon furnish such Owner with a building guide which summarizes the factors relevant to the design, construction and maintenance of Improvements in the Project and the various design controls and restrictions applicable to the Owner's Lot, provided that in the event of any conflict between such building guide and the Architectural Committee Rules, or the Declaration, the latter shall control. The Owner shall engage the services of a licensed architect and landscape architect to prepare all plans and specifications for the construction of any Improvements to the Owner's Lot. The Owner and the Owner's architect shall acknowledge by letter that they have read and studied the contents of the building guide. If the Architectural Committee shall so request within ten (10) days following its receipt of the last of said letters of acknowledgement, the Owner and his architect, shall meet with an architectural member of the Architectural Committee in order to benefit from such member's knowledge of and experience with these Restrictions, the Architectural Committee Rules, and the Project. Such meeting shall be at mutually convenient time not to exceed thirty (30) days

following the Architectural Committee's request therefor, and shall be held at the office of the Association, at the Project or at some other mutually convenient place. The Association will pay for the first hour of consultation with the architect member only. Any additional consultation shall be at the Owner's expense.

9.6.2 Preliminary Submission: Following receipt by the Architectural Committee of said letters of acknowledgement and following said meeting, if any, Owner shall submit to the Architectural Committee for approval preliminary plans and specifications for the proposed work including the following:

- (i) a plot plan of the Lot showing (a) contour lines, (b) the location of all existing and/or proposed Improvements, (c) the proposed grading, drainage and roof plan, (d) the location of all proposed utility installations, (e) setback lines, and (f) view channels;
- (ii) a topographic survey of the Lot at minimum two (2) foot increments prepared by a registered land surveyor with a scale of 1/8 inch = 1 foot;
- (iii) floor plans;
- (iv) drawings showing all elevations;
- (v) description of exterior materials and color, with samples;
- (vi) working drawings and construction specifications;
- (vii) the Owner's proposed construction schedule;
- (viii) building and site sections from property line to property line showing compliance with building envelope restrictions shown on the Declarant's plot plan; and
- (ix) a conceptual landscape plan indicating proposed trees and plant material.

The plot plan shall be either 1/8 inch = 1 foot, 1 inch = 10 feet or larger scale. In addition, the Owner or his architect shall also provide the Architectural Committee with three

(3) copies of a reduced-scale plot plan at a 1 inch = 40 feet scale accurately and legibly showing the same items and details as the aforementioned plot plan as well as roof lines for all Improvements. This plan will be used to assemble a composite layout plan for the Project, showing the relationship of proposed locations of all Improvements and drainage control facilities. This layout plan will assist the Architectural Committee in its review of Residence sitings.

The floor plan shall be at a 1/4 inch = 1 foot scale, showing plans for each level.

Exterior elevations shall be at a 1/8 inch = 1 foot scale, showing each exposed side of the proposed Improvements, indicating proposed exterior materials and general color scheme.

Cross sections shall be at a 1/4 inch = 1 foot scale.

The plans shall also show additional sections through ridge lines and/or high points of the roof showing the dwelling height in relation to the imaginary plane for houses using the determination of height limitation set forth in Section 4.7.

The plans shall also show the use of swimming pools and ponds, air conditioning systems and solar heating systems, if any are contemplated for use by the Owner.

The Architectural Committee shall require that the submission of plans and specifications be accompanied by a reasonable plans inspection fee to be determined by the Architectural Committee periodically.

9.6.3 Preliminary Architectural Approval:

9.6.3.1 The Architectural Committee shall approve the preliminary plans, drawings and specifications submitted to it pursuant to Subsections 9.6.1 and 9.6.2 only on the following conditions:

9.6.3.1.1 The Owner and the Owner's architect, shall have strictly complied with the provisions of Subsections 9.6.1 and 9.6.2 above; and

9.6.3.1.2 The Architectural Committee finds that the preliminary plans and specifications conform to the Declaration, particularly to the requirements and restrictions of Article IV and to the Architectural Committee Rules in effect at the time such plans were submitted to the Committee.

9.6.3.2 If, after reviewing the preliminary plans and specifications, a majority of the members of the Architectural Committee, in their sole discretion, find that the proposed work would, for any reason whatsoever (including the design, height or location of any proposed Improvement and the probable effect thereof on other Owners in the use and enjoyment of their private or Common Area) be incompatible with The Pointe, then the Architectural Committee shall not approve the preliminary plans, drawings and specifications submitted to it pursuant to Subsection 9.6.1 above and shall so notify the Owner concerned in writing setting forth the reasons for such disapproval.

9.6.4 Final Submission:

9.6.4.1 All approvals shall be in writing and may be conditioned upon the submission by the Owner or the Owner's architect of such additional plans and specifications as the Architectural Committee shall deem appropriate for the purpose of ensuring that the construction of the proposed Improvements shall be in accordance with the approved plans; provided, however, that plans, drawings and specifications which have been neither approved nor rejected within sixty (60) days from the date of submission thereof to the Architectural Committee shall be deemed approved.

9.6.4.2 After approval of the preliminary plans and specifications or modifications or amendments thereto required by the Architectural Committee, the Owner or the Owner's architect shall submit two (2) sets of final plans to the Architectural Committee which shall include a complete set of construction plans and specifications, landscape and irrigation plans and samples of exterior colors and materials to be used in the construction of the Improvements which shall be retained and maintained by the Architectural Committee as a permanent record.

9.6.4.3 Following Preliminary Architectural Approval the Owner shall submit to the Architectural Committee for approval final plans and specifications for the proposed work including the following:

- (i) a plot plan of the Lot showing
 - (a) contour lines,
 - (b) the location of all existing and/or proposed Improvements,
 - (c) the proposed grading, drainage and roof plan,
 - (d) the location of all proposed utility installations,
 - (e) setback lines, and
 - (f) view channels;

- (ii) a topographic survey of the Lot at minimum two (2) foot increments prepared by a registered land surveyor with a scale of 1/8 inch = 1 foot;
- (iii) floor plans;
- (iv) drawings showing all elevations;
- (v) description of exterior materials and color, with samples;
- (vi) working drawings and construction specifications;
- (vii) the Owner's proposed construction schedule;
- (viii) building and site sections from property line to property line showing compliance with building envelope restrictions shown on the Declarant's plot plan;
- (ix) a conceptual landscape plan indicating proposed trees and plant material; and
- (x) location of mailbox.

The plot plan shall be either 1/8 inch = 1 foot, 1 inch = 10 feet or larger scale. In addition, the Owner or his architect shall also provide the Architectural Committee with three (3) copies of a reduced-scale plot plan at a 1 inch = 40 feet scale accurately and legibly showing the same items and details as the aforementioned plot plan as well as roof lines for all Improvements. This plan will be used to assemble a composite layout plan for the Project, showing the relationship of proposed locations of all Improvements and drainage control facilities. This layout plan will assist the Architectural Committee in its review of Residence sitings.

The floor plan shall be at a 1/4 inch = 1 foot scale, showing plans for each level.

Exterior elevations shall be at a 1/8 inch = 1 foot scale, showing each exposed side of the proposed Improvements, indicating proposed exterior materials and general color scheme.

Cross sections shall be at a 1/4 inch = 1 foot scale.

The plans shall also show additional sections through ridge lines and/or high points of the roof showing the dwelling height in relation to the imaginary plane for houses using the determination of height limitation set forth in Section 4.7.

The plans shall also show the use of swimming pools and ponds, air conditioning systems and solar heating systems, if any are contemplated for use by the Owner.

The Architectural Committee shall require that the submission of plans and specifications be accompanied by a reasonable plans inspection fee to be determined by the Architectural Committee periodically.

9.6.5 Final Architectural Approval:

9.6.5.1 The Architectural Committee shall approve the final plans, drawings and specifications submitted to it pursuant to Subsections 9.6.1 and 9.6.2 only on the following conditions:

9.6.5.1.1 The Owner and the Owner's architect, shall have strictly complied with the provisions of Subsections 9.6.1 and 9.6.2 above; and

9.6.5.1.2 The Architectural Committee finds that the final plans and specifications conform to the Declaration, particularly to the requirements and restrictions of Article IV and to the Architectural Committee Rules in effect at the time such plans were submitted to the Committee.

9.6.5.2 If, after reviewing the final plans and specifications, a majority of the members of the Architectural Committee, in their sole discretion, find that the proposed work would, for any reason whatsoever (including the design, height or location of any proposed Improvement and the probable effect thereof on other Owners in the use and enjoyment of their private or Common Area) be incompatible with The Pointe, then the Architectural Committee shall not approve the final plans, drawings and specifications submitted to it pursuant to Subsection 9.6.1 above and shall so notify the Owner concerned in writing setting forth the reasons for such disapproval.

9.7 PROCEEDING WITH WORK: Upon receipt of approval from the Architectural Committee, pursuant to Section 9.6 above, the Owner shall satisfy all conditions thereof and commence construction within one year of the date of the Architectural

Committee's approval of the Owner's final plans and thereafter diligently complete all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within the time prescribed in Subsection 4.14.24. If the Owner shall fail to comply with this Section, any approval given pursuant to Section 9.6 above, shall be deemed revoked unless the Architectural Committee, upon written request of the Owner made prior to the expiration of said time period, extends the time for such commencement.

9.8 FAILURE TO COMPLETE WORK: The Owner shall in any event complete the construction, reconstruction, refinishing or alteration of any such Improvements within eighteen (18) months after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to comply with this Section the Board may proceed in accordance with the provision of Section 9.9 below as though the failure to complete the Improvements were a noncompliance with approved plans and may assess a fine or fines against the Owner as provided in Section 6.10.

9.9 INSPECTION OF WORK: Inspection of work and correction of defects therein shall proceed as follows:

9.9.1 Upon the completion of all framing for Improvements to be constructed upon any Lot the Owner shall give written evidence in the form of a certificate by a certified land surveyor that the framing in place is in full compliance with the approved final plans, and upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Committee.

9.9.2 Within three (3) working days after the receipt of the certificate referred to in Subsection 9.9.1 above, the Architectural Committee, or its duly authorized representative, may inspect such Improvements to determine whether the Improvements were constructed, reconstructed, altered or refinished to substantial compliance with the final plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the final plans, it shall notify the Owner in writing of such noncompliance within ten (10) days, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance.

9.9.3 If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the noncompliance is given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, the Architectural Committee and, in the discretion of the Board, to any other interested person.

9.9.4 At the hearing, the Owner, the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option may either remove the noncomplying Improvements or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a reimbursement assessment against such Owner pursuant to Section 6.4 hereof.

9.9.5 If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved plans.

9.10 WAIVER; GOVERNMENTAL APPROVALS: The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. Under no circumstances shall the approval by the Architectural Committee be considered satisfaction of any requirement to obtain from local government agencies permits for construction, the responsibility for which shall be solely that of the Owner.

9.11 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, in a form suitable for filing in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as the case may be, certifying (with respect to any Lot of said Owner) that, as of the date thereof, either: (1) all Improvements made and other work done upon or within said Lot comply with these restrictions, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in the Lot through him, shall be entitled to rely on said certificate with respect to the matters being conclusive as between the Association, Declarant, all Owners and such persons deriving any interest through them.

9.12 LIABILITY: Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of: (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (iii) the Improvements or any manner of improvement of any Lot; or (iv) the execution and filing of an estoppel certificate pursuant to Section 9.11, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

9.13 NONEXISTENCE OF ARCHITECTURAL COMMITTEE: In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be an Architectural Committee or there shall not be a quorum necessary to act on a particular matter the approval or action by the Architectural Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be an Architectural Committee with sufficient members, all matters requiring such approval or action may be approved or done by the President of the

Association, or any Vice President thereof, and his certificate that there had been no Architectural Committee, or that the required members were not present, and that he was acting pursuant to the authority of this Section shall be conclusive between the Owners, the Association, or from anyone deriving any interest in a Lot through an Owner, and any other person. The President or a Vice President acting hereunder shall be entitled to employ an architect or engineer to render technical advice and to receive reasonable compensation to be set by the Board for his services.

ARTICLE X

LIMITATION OF RESTRICTIONS ON DECLARANT

10.1 LIMITATION OF RESTRICTIONS: Declarant is undertaking the work of developing a residential subdivision. The completion of that work and the sale and other disposal of Lots is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

10.1.1 Prevent Declarant, its contractors or subcontractors from doing on the Project, or any Lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said development;

10.1.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, including property annexed thereto, such structures as may be reasonably necessary for the conduct of its business of completing said work, establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise;

10.1.3 Prevent Declarant from conducting on any part of the Project, including property annexed thereto, its business of completing said development, of establishing said property as a residential community and of disposing of said property in parcels of Lots by sale, lease or otherwise; or

10.1.4 Prevent Declarant from maintaining such sign or signs on any Lot as may be necessary for the sale, lease or disposition thereof.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 AMENDMENT AND DURATION:

11.1.1 Amendment: After the conveyance of the first Lot, the provisions hereof may be amended by a vote or written consent of the record Owners constituting not less than sixty-five percent (65%) of the Members entitled to vote. In the event only one class of Membership exists at the time of the proposed amendment, said amendment shall require the vote or written consent of sixty-five percent (65%) of the votes of Members other than Declarant. Said amendment shall be effective upon the filing in the Bureau of Conveyances and with the Office of the Assistant Registrar of the Land Court of the State of Hawaii of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Association. No amendments of Section 2.21, Subsections 4.1.1 and 4.14.1 shall be effective unless the Association first obtains the prior written approval for such amendments from the Director of the Department of Land Utilization of the City and County of Honolulu.

11.1.2 Duration: The provisions of this Declaration including the covenants, conditions and restrictions contained herein, shall continue and be effective for a period of eighty (80) years from the date of recordation and shall be automatically extended for successive periods of ten (10) years upon a majority vote of the Members entitled to vote.

11.2 ENFORCEMENT AND NONWAIVER:

11.2.1 Right of Enforcement: Except as otherwise provided herein, Declarant, the Association, or any Owner or Owners shall have the right to enforce any and all of the limitations, covenants, conditions, restrictions, obligations, liens and charges now or hereafter imposed by this Declaration upon the Owners or upon any Lot in the Project, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violates any such limitation, restriction, covenant or condition, or fails to pay and satisfy when due any such lien or charge. Except as otherwise expressly provided herein, no entry upon the Lot of any Owner or other action to enforce any such limitation, restriction, covenant, condition, obligation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default or breach involved.

11.2.2 Violations and Nuisance: Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association, or an Owner or Owners. However, any other provision to this Declaration notwithstanding, only Declarant, the Board of the Association, or their duly authorized agents may enforce by self-help any covenant, condition or restriction herein set forth. Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by this Declaration, provided, however, anything herein to the contrary notwithstanding, no Owner sa such shall have any right to enter upon the Lot of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association except by proper legal proceedings and authority of a court having jurisdiction.

11.2.3 Violation of Law: Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Lot within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

11.2.4 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

11.2.5 Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions thereof.

11.3 CONDEMNATION OF COMMON AREA: If at any time all or any portion of any Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the holder or holders of the fee title to such area as their interests may appear. Any such award to the Association shall be deposited into the operating fund of the Association. No Owner shall be entitled to any portion of such award, and no Owner shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association, or other holder of the fee title which shall, in its name alone, represent the interests of all Lot Owners to the extent such Lot Owners have any interest.

11.4 OBLIGATIONS OF OWNERS: No Owner may avoid the burdens or obligations imposed on the Owner by this Declaration through non-use of any Common Area or the facilities located thereon or by abandonment of the Owner's Lot. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligation or enjoy any of the benefits of any Owner under this Declaration.

**11.5 CONSTRUCTION AND SEVERABILITY; SINGULAR AND PLURAL;
TITLES:**

11.5.1 Restrictions Construed Together: All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Project as set forth in this Declaration.

11.5.2 Restrictions Severable: Notwithstanding the provisions of Subsection 11.5.1 above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provisions or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

11.5.3 Singular Includes Plural: The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

11.5.4 Captions: All captions or titles used in this Declaration are intended solely for convenience of the reference and shall not affect that which is set forth in any of the terms or provisions of said Restrictions.

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

11.7 NOTICES, DOCUMENTS, DELIVERY:

11.7.1 Any notice or other document permitted or required by this Declaration to be delivered may be delivered

either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Association at the address designated by the Association from time to time by written notice to the Owners, and shall be deemed to have been delivered to the Architectural Committee twenty-four (24) hours after a copy of the same has been deposited in the same manner addressed to the Architectural Committee in care of the Association at the latter's then current address. The post office address of an Owner shall be the street address of the Lot of such Owner, and delivery by mail shall be deemed complete to an Owner twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

11.7.2 Delivery to any member of the Board shall be deemed adequate delivery to the Association and delivery to any member of the Architectural Committee shall be deemed adequate delivery to the Architectural Committee.

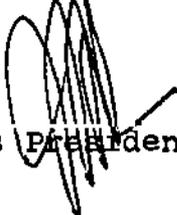
11.7.3 Where there is more than one Owner of a Lot the delivery personally or by mail to any Owner shall be effective delivery to all Owners of such Lots.

11.7.4 The address of the Declarant may be changed by notice in writing delivered to the Association and the address of the Association may be changed by notice in writing delivered to all Owners.

11.8 CONFLICTS: It is the intention of Declarant that an Owner of a Lot within The Point at Hawaii Loa Ridge becomes a Member of The Point Owners Association and the Hawaii Loa Ridge Owners Association. With respect to any conflict between obligations imposed by this Declaration and by the Covenants Conditions and Restrictions, the provisions of this Declaration shall be deemed to prevail in all respects.

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

HMF, INC.

By 
Its President

THE ORIGINAL OF THE DOCUMENT
FILED IN THE OFFICE OF
THE ASSISTANT REGISTRAR
OF THE LAND COURT OF THE
STATE OF HAWAII

Received and filed this FFD 2/11/1992
day of _____
at 12:27 o'clock P.M. and
filed as Land Court Document
No. 1892319

We hereby certify that this
is a true copy of the original.

FIRST AMERICAN TITLE CO.
OF HAWAII, INC.

Alton J. ...

LAND COURT SYSTEM

Return by Mail Pickup To:
REINWALD, O'CONNOR, MARRACK,
HOSKINS & PLAYDON
733 Bishop Street, Suite 2400
Honolulu, Hawaii 96813
Phone: 524-8350 (Attn: GDB)

REGULAR SYSTEM

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION made on February 6, 1992, by HMF, INC.,
a Hawaii corporation, whose address is 841 Bishop Street, Suite
2102, Honolulu, Hawaii 96813, hereinafter referred to as
"Declarant",

W I T N E S S E T H:

WHEREAS, Declarant is the owner of property commonly
referred to as the "Hawaii Loa Ridge" located in Niu and Wailupe,
Oahu, Hawaii, a portion of which has received final subdivision
approval by the City and County of Honolulu for single family
residential lots; and

WHEREAS, the Declarant and the City and County of
Honolulu have agreed that some of the lots within the subdivision
should be made subject to a building height restriction; and

WHEREAS, the lots to be affected by the building height
restriction are more particularly described in Exhibit A attached
hereto and made a part hereof;

NOW, THEREFORE, Declarant hereby declares that all of the
property described in Exhibit A shall be held, sold, conveyed,
encumbered, leased, occupied and improved subject to the

restrictions set forth in this Declaration which is established, declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the property affected. The restriction shall run with the property described in Exhibit A and shall be binding upon all parties having or acquiring any right, title or interest in and to the property or any part thereof, and shall inure to the benefit of the Declarant and the owners of other lots within the subdivision to be known as "Hawaii Loa Ridge".

RESTRICTION

No improvement of any nature shall be constructed or permitted on the property described in Exhibit A unless such improvement is constructed in accordance with the more restrictive of either (1) the Land Use Ordinances of the City and County of Honolulu, as amended from time to time, or (2) the following: no improvements of any nature shall be constructed which exceeds fifteen (15) feet in height from existing grade at the nearest property line or building setback line as established by the Declarant, increasing to a maximum of twenty-five (25) feet in height from existing grade shown on Exhibits 1 through 17 attached hereto and made a part hereof, such that no portion of the improvement constructed within the "building envelope" area as shown on the plan view of Diagram A attached hereto and made a part hereof exceeds in height the "building envelope" line as shown on the section view of Diagram A.

IN WITNESS WHEREOF, the undersigned has executed this indenture on the day and year written above.

HMF, INC.

By  Its President

Declarant

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
)
) SS: -

On this 16th day of December, 1991, before me appeared JAMES P. OHLMAN, to me personally known, who, being by me duly sworn, did say that he is the President of HMF, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.


Notary Public, State of Hawaii

My commission expires: 7-8-93

L.S.

EXHIBIT A

All of those certain parcels of land situate at Wailupe, City and County of Honolulu, State of Hawaii, more particularly described as Lots 1845 to 1889, inclusive, and Lots 1891 and 1892, as shown on Map 282, of Land Court Application No. 656 of Robert Hind.

Being all of the land described in Transfer Certificate of Title No. 324,778, issued to HMF, Inc., a Hawaii corporation.

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

On this 26th day of February, 1992, before me appeared JAMES P. OHLMAN, to me personally known, who, being by me duly sworn, did say that he is the President of HMF, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

Derna M. Muraoka
Notary Public, State of Hawaii

My commission expires: 3/24/93

LS

EXHIBIT A

All of those certain parcels of land situate at Wailupe, City and County of Honolulu, State of Hawaii, more particularly described as follows:

Lots 1851 to 1867, inclusive, as shown on Map 282, of Land Court Application No. 656 of Robert Hind.

Being a portion of the land described in Transfer Certificate of Title No. 384,779, issued to HMF, Inc., a Hawaii corporation.