



**Declaration of Covenants, Conditions and Restrictions**

# **Mililani Town**

**Declaration of Covenants,  
Conditions and  
Restrictions**

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# Declaration of Covenants, Conditions and Restrictions

**This Declaration**, made this 19th day of April, 1968, by Mililani Town, Inc., a Hawaii corporation, whose principal place of business and post office address is 401 Kamakee Street, Honolulu, City and County of Honolulu, State of Hawaii, hereinafter referred to as the "Declarant,"

**Witnesseth:**

**Whereas**, Declarant is the owner of certain lands in Waipio and Waikakalaua, District of Ewa, City and County of Honolulu, State of Hawaii, more particularly described in Exhibit A attached hereto and made a part hereof;

**And Whereas**, Declarant intends to develop said property with residences, apartments, community facilities, employment centers, parks, open areas and a variety of uses by means of a planned community development which will combine practical usefulness and economic benefit with aesthetic enjoyment so as to provide a complete town that will grow and intensify in its uses, densities and activities, year by year, resulting in an urban community, specifically distinct from a uniform, detached residential development, and the purpose of this Declaration is to promote and perpetuate such a development to meet the needs and demands of the population of the area and for the benefit of the City and County of Honolulu and State of Hawaii;

**Now, Therefore**, Declarant hereby declares that all of the property described above shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the Mililani Town Restrictions, meaning the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the properties. These limitations, restrictions, covenants and conditions shall run with said property and shall be binding upon all parties

having or acquired any right, title or interest in and to the described property or any part thereof, and shall inure to the benefit of the Declarant, the Association and Each Owner thereof or any part thereof, and each successor in interest of such Owner.

# Article I

## Definitions

Unless the context in the Town Restrictions otherwise specifies or requires, the terms defined in this Article I shall for all purposes of the Mililani Town Restrictions have the meanings herein specified:

<b>Architect</b>	shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 166, Revised Laws of Hawaii 1955, or registered pursuant to the provisions of the state laws of the state of his domicile.	<b>Cotenancy Area</b>	shall mean any real property conveyed to the Owners of more than one lot to be held as tenants in common and to be used by such Owners jointly, including, without limitation, roads, parks and open spaces. A cotenancy area shall not be deemed a separate lot as herein defined. The interest of an Owner in a cotenancy area shall be deemed appurtenant to the lot owned by such Owner.
<b>Association</b>	shall mean the Mililani Town Association, a nonprofit corporation described in Article V, and its successors and assigns.	<b>Custom Lot</b>	shall mean all of the real property referred to in section 3.03a, including all improvements thereon.
<b>Board</b>	shall mean the Board of Directors of the Association.	<b>Declarant</b>	shall mean Mililani Town, Inc., its successors and assigns.
<b>By-Laws</b>	shall mean the By-Laws of the Association which have been or shall be duly adopted substantially in the form attached hereto as Exhibit C and incorporated herein, as such by-laws may from time to time be amended.	<b>Design Committee</b>	shall mean, the Committee created pursuant to Article IV hereinafter set forth.
<b>Charter</b>	shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 173, Revised Laws of Hawaii 1955 (as amended) substantially in the form attached hereto as Exhibit B and incorporated herein, as such Charter may from time to time be amended.	<b>Design Committee Rules</b>	shall mean those rules adopted by the Design Committee pursuant to section 4.04 of Article IV.
<b>Common Area</b>	shall mean all of the real property which has been conveyed in fee to the Association, pursuant to the provisions hereinafter set forth, together with all of the improvements from time to time constructed thereon.	<b>Excavation</b>	shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen inches.
<b>Condominium</b>	shall mean a Horizontal Property Regime as defined in Chapter 170A, Revised Laws of Hawaii 1955 (as amended).	<b>File or Filed</b>	shall mean with respect to any subdivision map, the map which has been filed in the Bureau of Conveyances of Hawaii or in the Office of the Assistant Registrar of the Land Court.
<b>Cost of Living Index</b>	shall mean the "Consumer Price Index United States City Average for Urban Wage Earners and Clerical Workers-All Items," which is published by the U. S. Department of Labor, Bureau of Labor Statistics, Washington, D.C.	<b>Fill</b>	shall mean any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen inches.
		<b>Fiscal Year.</b>	shall mean the year from April 1 to March 31
		<b>Garage</b>	The term "garage" shall include a carport.
		<b>Improvements</b>	shall include buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind.
		<b>Lot</b>	shall mean any lot designated on a subdivision map for residential use, or, with respect to any condominium, an apartment of such condominium, or, with respect to any apartment house, duplex, or multiple dwelling, a complete residential unit, and in each case, except when clearly contrary to the context, shall include

	all improvements thereon. Upon the splitting of any lot pursuant to section 7.04, the term "lot" shall mean each parcel, condominium apartment, or residential unit, into which such lot has been split. Upon the consolidation of two or more lots pursuant to section 7.04 the term "lot" shall mean the parcel consisting of the lots so consolidated.	Owner (other than the Declarant or the Association) by means of a deed, together with all improvements from time to time constructed thereon.
<b>Maintenance Assessment</b>	shall mean any assessment levied pursuant to section 6.02.	<b>Record and Recorded</b> The terms "record" and "recorded" shall mean with respect to any document, that such document has been recorded in the Bureau of Conveyances of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of Hawaii or both.
<b>Manager</b>	shall mean the person or corporation appointed as such, pursuant to section 5.05.	<b>Recreational Facility</b> The term "recreational facility" shall mean any improvement used for or in connection with any recreational purpose or activity, interpreted broadly to include without limitation, park and playground facilities, riding stables and trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and crafts centers, swimming and other pools.
<b>Mililani Rules</b>	shall mean the rules from time to time in effect pursuant to the provisions of section 5.06.	<b>Residence</b> shall mean a building or buildings used for residential purposes, together with any garage, carport or similar outbuilding appurtenant thereto, whether or not a part of the same structure.
<b>Mililani Town</b>	shall mean all of the real property referred to in section 2.01, together with such other real property from time to time annexed thereto pursuant to the provisions of section 2.02.	<b>Road</b> shall mean any paved vehicular way constructed within or upon any portion of the common area or restricted common area, except any apron or other paved area constructed for the purpose of providing paved access from such way to any private area.
<b>Mililani Town Restrictions</b>	shall mean with respect to all property within Mililani Town, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and with respect to any property within Mililani Town which is annexed pursuant to section 2.02, as such Declaration may from time to time be supplemented or modified by the provisions of a declaration, if any, filed with respect to such property, pursuant to paragraph (a) of section 2.02.	<b>Special Assessment</b> shall mean any assessment levied pursuant to section 6.03.
<b>Notice</b>	shall mean a notice delivered pursuant to section 7.09.	<b>Subdivide</b> shall mean the division of any lot into two or more parcels, condominium apartments, or residential units.
<b>Operating Fund</b>	shall mean the fund created pursuant to section 6.01.	<b>Subdivision Map</b> shall mean any map recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court.
<b>Owner</b>	shall mean the person or persons, corporation or corporations, or other legal entity or entities, as set forth in section 5.02, provided, however, that:  (a) for the purposes of limitations and restrictions set forth in Article III, "Owner" shall not include the Declarant with respect to any lots owned by the Declarant; and  (b) "Owner" shall include for the purposes of Article 111, unless the context otherwise requires, family, invitees, licensees and lessees of any Owner.	<b>Visible from Neighboring Property</b> shall mean, with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above any adjoining property, excluding contiguous property owned by the Owner of the property involved, but including common area and streets, assuming that such adjoining property has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the property upon which such object or activity is located, whichever elevation is the lower.
<b>Private Area</b>	shall mean any real property conveyed to an	

# Article II

## Mililani Town Property subject to Mililani Town Restrictions

**Section 2.01 - Mililani Town: Initial Development.** The initial development shall be all of the property described in Exhibit A attached hereto and made a part hereof, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Mililani Town Restrictions. Said property, together with such other real property from time to time annexed thereto and made subject to Mililani Town Restrictions pursuant to section 2.02 shall constitute Mililani Town.

**Section 2.02 - Annexation of Subsequent Developments.** The Declarant may, pursuant to the following provisions of this section, from time to time and in its sole discretion, annex to Mililani Town all or any part of the real property (not then constituting a part of Mililani Town) owned by it at the time of such annexation and situated in Waipio and Waikakalaua. The Association may also annex adjacent property upon approval by an affirmative vote of 3/4ths of all Class A members and by the Class B member, if any, at a meeting duly called for this purpose, written notice of which shall have been sent to all members not less than 30 days in advance of the meeting, setting forth the purpose of the meeting.

(a) The annexation of such property shall become effective when and only when the last of each of the following events occurs:

(1) Declarant or Association shall have recorded a declaration, which may consist of more than one document, and which shall, among other things (aa) describe the real property to which it is to be so annexed to Mililani Town; (bb) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to such property as provided in paragraph (c) below; and (cc) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to Mililani Town Restrictions; and

(2) With respect to the real property described in such declaration, Declarant or Association shall have filed a subdivision map.

(b) Upon the annexation becoming effective, the property covered by such annexation shall become and constitute a part of Mililani Town.

(c) Any provision herein to the contrary notwithstanding, the declaration referred to in paragraph (a) above may, with respect to all or any part of the property described in such declaration, provide for or refer to one or more documents creating any or all of the following:

(1) such new land classifications not then provided for in section 3.01 and such limitation restrictions, covenants and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property;

(2) with respect to the land classification provided for in section 3.01 such additional or different limitations, restrictions, covenant and conditions with respect to the use thereof as Declarant may deem to be appropriate for the development of such property, provide however, that such additional or different limitations, restrictions, covenants and conditions applicable to common areas lying within such property shall not discriminate between Owner or their guests, or between Owners of such property and other Owners of any other property within Mililani Town, and/or

(3) a Declaration of Restrictions, subordinate to Mililani Town Restrictions and applicable exclusively to a specified area.

The Mililani Town Restrictions as applicable to such property upon the annexation thereof unto Mililani Town, shall be deemed to include any and all additions and modifications thereto authorized by subparagraphs (1) and (2) above and set forth or referred to in such said declaration.

(d) No property, except that described in said Exhibit A and hereby made subject to the Mililani Town Restrictions and except that specifically annexed as hereinbefore provided shall be deemed subject to the Mililani Town Restrictions, whether or not shown on any subdivision map filed by Declarant or describe or referred to in any document executed and/ recorded by Declarant. No designation of any parcel, lot or other area on any map filed by Declarant as a private area, custom area, common area, cotenancy area, road, street,

school 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 said Exhibit A, or specifically later annexed as aforesaid, and so designated on a subdivision map for such use, nor shall any Owner, or 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 the Declarant will commit or subject to the Mililani Town Restrictions any land it may now own or hereafter acquire other than that described in said Exhibit A or such amendment.

## Article III

# Land Classifications and Restrictive Covenants

**Section 3.01 - Land Classification** All land within Mililani Town has and shall be classified into the following areas:  
(a) private area; (b) common area;  
(c) cotenancy area.

**Section 3.02 - Private Area: Uses; Restrictions** Each lot in the private area shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in section with respect to each lot.

(b) No improvement or other work which in any way alters any lot from its natural or improved state existing on the date such lot was first conveyed in fee by the Declarant to an Owner, shall be made or done except upon strict compliance with and within the restrictions of the provisions of section 3.03.

(c) Each lot shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such lot, provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

(1) any artist, artisan or craftsman from pursuing his artistic calling upon the lot, if such artist, artisan or craftsman also uses such lot for residential purposes, is self-employed and has no employees working on such lot, and does not advertise or offer any product or work of art for sale to the public upon or from such lot;

(2) the leasing of any lot from time to time by the Owner thereof, subject, however, to all of the restrictions of the Mililani Town Restrictions.

(d) Each lot and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety, or health hazard to Mililani Town or any part thereof, all at such

Owner's sole cost and expense. The Owner of each lot will maintain in good repair any fence or wall along any street boundary of his lot which had been erected by Declarant, and will also maintain any fence or wall on his lot erected by Declarant on or within two feet of any common boundary between his lot and his neighbor's lot, unless he and his neighbor shall agree to demolish and remove the same. Each neighbor with a fence or wall along such a common boundary shall be liable to his neighbor for half the cost of maintenance or repair of such fence or wall incurred by such neighbor.

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

(f) No animals shall be maintained on any lot other than a reasonable number of generally recognized house pets kept for the Owner's personal pleasure and not for sale or other commercial purposes. No fowl, other than canaries, parakeets and other songbirds shall be maintained on any lot. No animals or fowl shall be permitted which are a nuisance to neighbors.

(g) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property shall be erected or maintained upon any lot except:

- (1) such signs as may be required by legal proceedings;
- (2) residential identification signs of a combined total face area of one square foot or less for each resident;
- (3) during the time of construction of any residence or other improvement, job identification signs having a maximum face area of six square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen; and
- (4) not more than one "For Sale" or "For Rent" sign having a maximum face area of three square feet, such sign to refer only to the premises on which it is situated.

(h) No house trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any lot at any time,

provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one year during an used exclusively in connection with the construction of any work or improvement permitted in section 3.03.

(i) No truck of more than one ton capacity shall be kept, placed or maintained upon any lot in such a manner that such truck is visible from the adjoining streets, provided, however that the provisions of this paragraph shall no apply to construction equipment maintained f a period not to exceed one year during and u exclusively in connection with the construction of any work or improvement permitted by section 3.03.

(j) No accessories, structures or buildings shall be constructed, placed or maintained u any lot prior to the construction of the main structure of the residence, provided, however that the provisions of this paragraph shall no apply to temporary construction shelters or facilities maintained for a period not to exceed one year during and used exclusively in connection with the construction of the main structure of the residence.

(k) No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintains upon any lot so as to be visible from any adjoining streets, provided that nothing in this paragraph shall prevent an Owner from performing maintenance work and minor repairs on his own trailer, vehicle or boat in his garage. 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 automobile is being repaired or is being maintained which is not in good operating condition, and to remove such automobile to a public dump, a repair shop, or a storage yard and the Owner of the lot shall be responsible for all costs involved (whether or not he be the owner of the automobile) and shall pay to the Association all costs incurred, and the Association and its agents shall not b liable for trespass or for conversion or for any damages to such automobile or for the taking of the same.

(l) No garbage or trash shall be permitted on any lot except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property.

(m) No open storage of furniture, fixtures, appliances and other goods and chattels not in active use will be permitted so as to be visible from neighboring property, and no outside clothes lines or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

(n) The Owner shall not permit any exterior fires whatsoever, except barbecue and imu fires, and shall not permit any condition on his lot which creates a fire hazard.

(o) No vehicular access is permitted from any lot to a street over a boundary which is indicated on the subdivision map covering such lot to have restricted access, nor over any strip of common area lying between the boundary of a lot and a public street (except where such access over such common area is the only access from the lot to any public street and an easement has been obtained from the Association), and the Owner shall not cut any curb along any such street adjacent to such boundary.

(p) No Owner shall park his car on any public park or sidewalk area or on any common area or on any portion of his lot visible from an adjacent street, except in a garage or on a paved driveway area, and no boat, trailer or truck camper will be kept on any lot except in a garage.

(q) The Owner shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his lot.

(r) No garage shall be used for other than the parking of vehicles and boats, unless the same be enclosed so as not to be visible from neighboring property by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the

foregoing, no garage not so enclosed shall be used for laundry or for storage purposes.

**Section 3.03 - Private Area: Alteration of Improvements; Excavations; etc.**

The right of an Owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any lot of a private area or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or to ins any utility line (wire or conduit) thereon or thereof, shall be subject to all of the following limitations and conditions of this section:

(a) **Custom Lots:** Except to the extent permit by paragraph (2) below, any construction or reconstruction of, or the refinishing or alterat of any part of the exterior of any improvement in any lot in an area which is designated on a subdivision map as a "CUSTOM" area (or words of like import) is prohibited until and unless the Owner of such lot first obtains approval therefor from the Design Committee as herein provided, and otherwise complies with all of the provisions of this section:

(1) Except to the extent reasonably necessary for the construction, reconstruction or alterat of any such improvement for which the Owner obtained approved plans pursuant to this sec

(i) No excavation or fill which would be visible from the neighboring property shall be create or installed upon; and

(ii) no change in the natural or existing drainage for surface water upon; and

(iii) no power, telephone or other utility line (wire or conduit) which would be visible from neighboring property shall be installed upon

any lot in a "CUSTOM" area until and unless the Owner of such lot first obtains the approv therefor from the Design Committee as herein provided and such Owner otherwise complies with all of the provisions of this Section. Th Association shall, in the event of any violation the provisions hereof, restore such private a to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of such lot shall reimburse t Association for all expenses incurred by it in performing its obligations under this paragraph.

(2) Any Owner proposing to construct or

reconstruct or to refinish or alter any part of the exterior of any improvement visible from neighboring property on or within his lot or to perform any other work which under the provisions of this paragraph (a) requires prior approval of the Design Committee, shall apply to the Design Committee for approval thereof as follows:

(i) The Owner shall submit to the Design Committee for approval prior to construction, preliminary plans for the proposed work, prepared by an architect unless otherwise permitted by the Design Committee, and showing in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within thirty (30) days after the submission of them to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to return within said thirty (30) day period shall be deemed to mean that the plans are approved.

(ii) Thereafter and still prior to commencement of construction, the Owner shall submit in duplicate the final plans and specifications of the proposed work to the Design Committee, including where appropriate and without limitation, a plot plan showing easements and set back and contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height of in excess of 6-feet and a trunk measuring 6-inches or more in any diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. Also, the Owner shall indicate his proposed construction schedule. The Design Committee shall require that the submission of plans and specifications be accompanied by a reasonable fee for the inspection thereof. The plans and specifications shall indicate all exterior materials, finishes and colors to be used.

(iii) The Design Committee shall review the final plans and specifications submitted to it pursuant to subparagraph (ii) and shall either approve the same or disapprove the same in writing within thirty (30) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said thirty (30) day period shall be

deemed approval. The Design Committee shall not disapprove any final plans and specifications on account of any matter apparent and approved in the preliminary plans submitted pursuant to the provisions of subparagraph (i) above. The Design Committee shall approve the plans and specifications if they conform to the requirements and provisions set forth in this paragraph (a). On request of an Owner, at any time, the chairman or any member of the Design Committee shall give to the Owner a certificate in writing evidencing the approval of any plans which have been so approved.

(iv) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee. An Owner may also extend his garage by the equivalent of one more parking space without approval of the Design Committee provided that such addition be of the same architectural design, color and materials of the original.

(v) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced the construction, reconstruction, refinishing, alteration or other work pursuant thereto within said one (1) year period and shall not thereafter complete the same with reasonable diligence. If the Owner shall not so commence within said one (1) year period, the Owner shall be required to resubmit said final plans and specifications for approval, and the Design Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall either approve or disapprove the same in writing within thirty (30) days after such resubmission, and the Design Committee may require another inspection fee.

(vi) Upon the completion of any construction, reconstruction, alteration or refinishing, or the completion of any other work for which approved plans are required pursuant to this section, the Owner shall give written notice

thereof to the Design Committee which shall within thirty (30) days inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans and specifications. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced action to remedy within said sixty (60) day period, the Design Committee shall notify the Association of such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee fails to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(vii) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in the Mililani Town Restrictions, except as may be specifically permitted therein, and in the event of violation of any of such Mililani Town Restrictions by an Owner, whether or not the Design Committee shall have approved the plans and specifications, the Association or any other owner shall have the right to commence and pursue any remedy provided in the Mililani Town Restrictions for the violation by an owner of any of such restrictions.

(viii) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in paragraph (b) below, and also shall consider whether the proposed improvement:

(1) is compatible and in harmony as to quality and type of materials and workmanship and as to external design with reference to existing structures and other improvements in the area and with reference to the location of the

proposed improvement with respect to topography and ground elevation;

(2) conforms to the general plan of the entire development;

(3) constitutes a suitable and adequate development of the lot;

(4) is, in the case of the principal building, substantially as valuable an improvement as the other comparable buildings in the area, or exceeds the same; and

(5) will not, because of its design unreasonably interfere with the light and air or view of adjoining lots.

(b) **All Private Areas:** The following standards and restrictions are applicable to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing upon any private area:

(1) No more than one residence shall be constructed on any lot. A guest suite or like facility without a kitchen, visually attached to the main residential structure, with a minimum connecting structure of a wall or fence not less than six feet high or a covered walk shall be deemed to be included as a part of a single residence.

(2) No structures shall be constructed between any applicable building setback lines pertaining to the area and the boundary of the lot, provided that walks, fences, walls, driveways and garbage receptacle enclosures may be so constructed if not in violation of any other restriction of this Declaration. No fence or wall shall be constructed on any lot in a "CUSTOM" area within 10 feet of the front boundary line.

(3) No reflective finishes shall be used on exterior surfaces (other than glass and the surfaces of hardware fixtures) where such exterior surface is visible from neighboring property. The colors of all exterior surfaces visible from neighboring property shall be shades of gray, brown, red-brown, yellow-brown, brown-green and gray-green in values from white to 75% of black and blue-green between medium and dark values.

(4) No roof shall be finished with built-up tar and gravel, except that flat roofs only may be

built-up tar and gravel in colors of dark brown to red-brown or gray to blue-gray.

(5) No metal roof or siding visible from neighboring property shall be permitted unless the same be maintained in non-reflective condition, and no gas tanks will be permitted on any lot which are visible from neighboring property.

(6) Each residence shall have appurtenant to it covered parking space for not less than two automobiles.

(7) No permanent exterior electric lighting of any sort shall be installed or maintained, the light source of which is visible from neighboring property. No antenna of any sort shall be installed or maintained which is visible from neighboring property except that antenna placed on the ground and not exceeding ten (10) feet in height above normal grade are allowed if not visible from the adjacent street.

(8) All telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground when outside the walls of the residence thereon.

(9) In addition to the restrictions hereinabove provided with respect to improvements in lots in a "CUSTOM" area, no substantial structural addition or alteration visible from a street on which any lot abuts shall be made after the initial residence has been completed without the prior approval of the Design Committee as to design, color and materials obtained in the manner hereinabove provided in subsection 3.03(a). An addition or alteration shall be deemed substantial if its fair replacement cost is in excess of \$500.00, measured in terms of purchasing power of the dollar in 1968.

(10) No trees planted by the Declarant within 10 feet of the property line on any lot shall be removed or cut down without the prior approval of the Design Committee.

(11) No second hand or used lumber or other material shall be used in any construction on any lot.

(12) When it appears that, because of the peculiar location, size or topography of a particular lot, its Owner cannot reasonably build a residence without violating a specific

restriction in this section, the Board shall have the authority, upon approval of the Design Committee, to grant to such Owner a waiver permitting him to proceed to build and occupy a residence without regard to the specific restriction.

**Section 3.04 - Common Areas; Uses; Restrictions.** The exclusive use of the common area shall be reserved equally to all Owners, except as herein specifically provided, and every Owner shall have a right and easement for enjoyment in and to the common area, which easement shall be appurtenant to and shall pass with the title to every lot, subject, however, to the following limitations and restrictions:

(a) The use of the common area shall be subject to the Mililani Town Rules.

(b) The use of the common area shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance thereof to the Association, to such road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provisions of paragraph (c) of section 5.05.

(c) No improvement, excavation or other work which in any way alters any common area from its natural or existing state upon the date which such common area was conveyed to the Association, shall be made or done except upon strict compliance with and within the restrictions and limitations of the provisions of section 3.05.

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above and section 3.05 there shall be no use of the common area, exclusive of roads, except natural recreational uses which do not injure or scar the common area or the vegetation thereof, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their private areas, or in their enjoyment of the common areas; without limiting the generality of the foregoing:

(1) There shall be no camping in common areas, except as permitted by the Board by written license.

(2) There shall be no fires started or maintained on the common area, except fires started and controlled by the Association incidental to the maintenance and preservation of property within Mililani Town, and cooking and campfires in proper enclosures in picnic or other areas within recreational facilities developed therefor by the Association.

(3) No animals shall be permitted on common areas except generally recognized house or yard pets when accompanied by and under the control of the Owners to whom they belong, livestock owned by the Association, and horses upon paths and other areas from time to time designated as bridle paths by the Association and upon such areas developed or maintained as equestrian recreational facilities by the Association.

(e) The rights to use and enjoy the common areas shall extend to the members of the families of all Owners and to their invitees.

**Section 3.05 -  
Common  
Area;  
Construction  
and Alteration  
of  
Improvements.**

No improvement, excavation or work which in any way alters any common area from its natural or existing state on the date when such common area was acquired by the Association, shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this section:

(a) Except to the extent otherwise provided in paragraph (d) below, no person other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter or maintain any excavation or fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any common area.

(b) Except to the extent otherwise provided in paragraph (c) below, if the Association proposes to construct, reconstruct, refinish or alter the exterior of any improvement located or to be located upon any common area, or if the Association proposes to make or create any excavation or fill or to change the natural or existing drainage or surface waters, or to remove any trees, shrubs or ground cover or plant any trees, shrubs or ground cover upon any common area, the Association shall submit to the Design Committee for approval the final plans and specifications for any such work in

such form and containing such information as the Design Committee may from time to time require. The Design Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if the following conditions have all been satisfied:

(1) If the plans are to construct any new improvements, including any alteration of the exterior appearance of any existing improvement upon any common area, the Design Committee finds that such improvement complies with the standards and restrictions set forth in subparagraphs (2) through (5) inclusive, of paragraph (b) of section 3.03 with respect to private areas, which standards and restrictions will also apply to common area, and that the design of such improvement is reasonably necessary or desirable in order to carry out the aims of the Association and is in harmony with other improvements and the overall appearance of Mililani Town as planned.

(2) The Design Committee finds that the proposed work shall not because of its design materially prejudice Mililani Town or any Owner therein in the use and enjoyment of its property. Such approval shall be in writing provided, however, that plans which have neither been approved or rejected within forty-five (45) days from the date of submission thereof to the Design Committee, shall be deemed approved. Rejection of plans by the Design Committee shall be in writing and shall set forth with particularity the reasons for such rejection. In the event of any such rejection any member of the Board shall have the right to submit to a meeting of the Association duly called, the notice of which shall contain reference to the consideration of the matter the question of whether to abandon the proposed improvement, excavation or work or to have the same redesigned and resubmitted to the Design Committee for approval.

(c) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof upon a common area in accordance with the last plans thereof approved by the Design Committee, or if such improvement existed upon the common area when such common area was conveyed to the Association, then in accordance with the original design, finish or standard of

construction of such improvement when such common area was conveyed to the Association.

(2) Construct, reconstruct, replace or refinish any road improvement upon any portion of the common area designated on a subdivision map as a road.

(3) Replace any destroyed trees or any other vegetation upon a common area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(4) Place and maintain upon any common area such signs and markers as the Association may in its sole discretion deem necessary for the identification of Mililani Town and of roads, for the regulation of traffic, including parking, and for the regulation and use of the common area and for the health and welfare and safety of Owners and the public, provided that the design of any such signs or markers be first approved by the Design Committee.

(d) Any Owner may, at any time and from time to time install and maintain within a common area any subsurface utility system, provided the same be approved by the Design Committee and an easement therefor be obtained from the Association.

**Section 3.06 - Cotenancy Areas; Uses, Restrictions; Construction and Alteration of Improvements.**

Each parcel which is a cotenancy area shall be subject to the exclusive use and benefit of the Owners thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in section 5.05 with respect to each parcel.

(b) No improvement or other work which in any way alters any parcel from its natural or improved state existing on the date the first undivided interest in such parcel was conveyed by the Declarant to an Owner, shall be made or done except upon strict compliance with and within the following restrictions:

(1) No Owner will make any such improvement or work without the written concurrence of all other Owners of undivided interests in the parcel involved.

(2) If under the provisions of Article III any lot to which an undivided interest in such parcel

is appurtenant is subject to the restriction that any improvement or other work done thereon requires approval of the Design Committee, then similar approval shall also be required for any improvement or other work on the subject parcel.

(c) No Owner shall use any cotenancy area, in which he owns an interest, for any use to which he cannot also put his lot under the provisions of the Mililani Town Restrictions.

(d) The Owners shall be jointly and severally responsible for maintaining their cotenancy area in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to Mililani Town or any part thereof. Each Owner of a parcel of cotenancy area shall reimburse any co-owner or the Association for his share of any expenses incurred by such co-owner or Association in so maintaining the area in proportion to his undivided interest therein.

(e) An Owner of an undivided interest in a cotenancy area shall not convey it separately from the lot to which it is appurtenant or convey the lot to which it is appurtenant without conveying also to the same party his undivided interest in the cotenancy area, provided, however, that all of the Owners owning a parcel of cotenancy area may, acting jointly, convey such parcel to the State of Hawaii or City and County of Honolulu for public purposes, or to the Association to be held as common area if the Association is willing to accept the same.

**Section 3.07 -- Presumption of Compliance.**

All of the following improvements, excavations, fills and other work shall for all purposes of the Mililani Town Restrictions be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article III:

(a) Those existing or maintained within or upon any property within Mililani Town at the time such property became a part of Mililani Town.

(b) Those existing or maintained within a private area at the time such private area was first conveyed by the Declarant to an Owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restriction in the Mililani Town Restrictions, pursuant

to plans and specifications approved by the Design Committee.

**Section 3.08 -  
Governmental,  
Eleemosynary,  
Religious,  
Educational,  
Community  
and Civic  
Organizations.**

Anything in the foregoing sections of this Article III to the contrary notwithstanding, the restrictions on improvements, use and occupancy set forth in said sections shall not apply to any lot or other area while and so long as the same is owned by or leased to State of Hawaii or City and County of Honolulu, or any governmental agency, public utility, eleemosynary institution, religious or educational institution, or community or civic organization (other than the Association) and used for public, governmental, public utility, charitable, religious, educational, community or civic purposes, whenever and to the extent, but only to the extent, that such restrictions shall prevent reasonable use of such lot for said purposes. All restrictions not so preventing shall continue to apply as if not so used, including without limitation, the requirements of Design Committee approval regarding improvements to be made by said State of Hawaii, City and County of Honolulu, agency, public utility, institution or organization in the same manner as if the same were to be made by any private individual or Owner. On cessation of such use, the restrictions of this Article III shall become applicable again in their entirety. The Declarant and the Association shall each have the power to release any lot or other area owned by it, temporarily or forever from any restrictions in this Article III if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of the same by said State of Hawaii, City and County of Honolulu, agency, public utility, institution or organization. While so owning or leasing and so using, said State of Hawaii, City and County of Honolulu, agency, public utility, institution or organization shall have no right to vote as a member of the Association, nor shall it be liable for any assessments under the provisions of Article VI, but shall be liable for all costs and expenses incurred by the Association in enforcing against it any of the provisions of this Declaration or arising out of any default by it of said provisions.

## Article IV Design Committee

**Section 4.01 -  
Design  
Committee:  
Organization,  
Power of  
Appointment  
and Removal  
of  
Members.**

(a) There shall be a Design Committee consisting of three members, of which at least one member shall be an architect who shall be designated the architect member. No other member shall be required to meet any qualification for membership on the Design Committee, except that any member other than the architect member or an initial member hereinafter designated, shall also be an Owner.

(b) There shall also be two alternate architect members of the Design Committee, any one of whom may be designated by the other members of the Design Committee to act in the place and stead of the architect member in the event of the absence or disability of the architect member, none of which alternate architect members need be Owners.

(c) The following persons are hereby designated as the initial members and alternate architect members of the Design Committee:

- (1) Alfred Boeke, architect member
- (2) George DeBacker, member
- (3) Peter M. Amcotts, member
- (4) Jack Sidener, alternate architect member
- (5) Louis McLane, alternate architect member

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as herein set forth.

(d) Except as provided in paragraph (e) below, the right from time to time to appoint and remove all members and alternate architect members of the Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(e) The right from time to time to appoint and remove members and alternate architect

members of the Design Committee shall be reserved to and vested in the Association as follows:

(1) From and after five (5) years from the date first above written, the Association shall have the right to appoint and remove one member of the Design Committee, who shall be the member, other than the member designated the architect member or an alternate architect member, who is the most recently appointed member as of the date such right is first exercised.

(2) From and after ten (10) years from the date first above written, the Association shall have the right to appoint and remove the two members of the Design Committee other than the member designated the architect member or an alternate architect member.

(3) The Association shall have the right to appoint and remove all members, including the architect and alternate architect members of the Design Committee from and after twenty (20) years from the date first above written, provided, however, that if the Declarant fails to exercise its rights under paragraph (d) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members and alternate architect members.

**Section 4.02 - Design Committee Duties.** (f) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant or to the Association, whichever then has the right to appoint and remove members.

It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article 111, to adopt Design Committee rules pursuant to Section 4.04 and to perform such other duties from time to time delegated to it by the Mililani Town Restrictions.

**Section 4.03 - Design Committee Meetings, Action, Compensation, Expenses.** The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two members shall constitute the act of the Design Committee, unless the unanimous action of its members is otherwise required by the Mililani Town Restrictions, provided, however, that the architect member shall have the power and authority to disapprove plans,

drawings and specifications submitted to the Design Committee for approval pursuant to any applicable section of Article III whether or

not any other member shall agree with him except with respect to approvals required under section 3.05. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. The architect member and the alternate architect members shall receive reasonable fees for professional services rendered. Such fees shall be charged by the Design Committee and shall be provided for in the rules promulgated pursuant to section 4.04, except that no fees shall be charged the Association. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

**Section 4.04 - Design Committee Rules.** The Design Committee may from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design Committee Rules" which, among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements which must be approved by the Design Committee. A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Design 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 or agent of the Owner or architect. The Design Committee Rules shall, to the extent practical, establish the standards which shall be required in the construction of any residences, apartment or condominium buildings to be constructed in Mililani Town.

**Section 4.05 - Non-Waiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under Mililani Town Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

**Section 4.06 -** Within thirty (30) days after written demand

**Estoppel Certificate.** therefor is delivered to the Design Committee by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be affixed by the Association, in no event to exceed \$25.00, the Design Committee shall deliver to such Owner an estoppel certificate executed by any two of its members in form suitable for recording in the Bureau of Conveyances of Hawaii and in the Office of the Assistant Registrar of the Land Court, certifying with respect to any lot of said Owner that, as of the date thereof, either (a) all improvements and other work made or done upon or within said lot comply with the Mililani Town Restrictions, or (b) such improvements and/or work do not so comply, in which event the certificate shall also (i) identify the noncomplying improvements and/or work, and (ii) set forth with particularity the cause or causes for such noncompliance. Any purchaser or lessee from the Owner or mortgagee or other encumbrancer of the property shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such purchaser, lessee, mortgagee or other encumbrancer.

**Section 4.07 - Liability.** Neither the Design Committee or 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 (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any property within Mililani Town, or (d) the execution and filing of an estoppel certificate pursuant to section 4.06, whether or not the facts therein are correct, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee, or any member thereof may, but is not required to, consult with or hear the Association or any Owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

**Section 4.08 - Non-existence of Design Committee.** In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be a Design Committee or there shall not be the members

necessary to act on a particular matter, the approval or action by the Design 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 a Design Committee with sufficient members, all matters requiring such approval or action may be approved or done by the President of the Mililani Town Association, or any vice president thereof, and his certificate that there had been no Design 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, any purchaser, lessee, mortgagee or other encumbrancer, and any other persons. 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 V

## Mililani Town Association

**Section 5.01 - Organization.** (a) The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and in its Charter and By-Laws.

**Section 5.02 - Membership.** (b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Charter.

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, the beneficial owner (herein called an "Owner") of any lot (within Mililani Town) shall be a member of the Association, provided, however, that, with respect to any condominium, the term Owner shall mean an apartment owner as defined in the Horizontal Property Act (Chapter 170-A, Revised Laws of Hawaii 1955, as the same may from time to time be amended). No person other than an Owner may be a member of the Association.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of the Mililani Town Restrictions, the Charter and the By-Laws of the Association.

**Section 5.03 - Voting Rights.** The voting rights of the members shall be as set forth in the Charter and By-Laws and the members shall be divided into two classes with voting powers as follows:

**Class A.** Class A members shall be the owners, as defined in Article V hereof, of lots, excepting the Class B member as hereinafter defined. The owner, or owners in the aggregate, of any lots, whether individuals, corporations or other legal entities, shall be entitled to one vote per lot. If more than one person or entity owns one given lot, any one of said persons or entities may exercise said one vote on behalf of all the owners of said lot, but no such vote shall be exercised without the unanimous consent of all such persons or entities.

**Class B.** The Class B member shall be the Declarant, as defined in the Mililani Town Restrictions. The Class B member shall be entitled to three votes per lot beneficially owned by it. The Class B membership shall cease and be converted to Class A membership December 31, 1983.

**Section 5.04 - Duties and Obligations of the Association.** The Association shall have the rights, obligations and duties, subject to the Mililani Town Restrictions, to do and perform each and ever one of the following for the benefit of the owners and for the maintenance and improvement of Mililani Town:

(a) The Association shall accept, as part of Mililani Town, all property annexed to Mililani Town pursuant to section 2.02 and shall accept all Owners as members of the Association.

(b) The Association shall accept title to all common areas and other property from time to time conveyed to it, pursuant to section 7.05.

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 profess 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 recreational facilities on the common areas to help defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by the Association.

(c) The Association shall maintain or provide for the maintenance of common areas and other property owned by the Association, including without limitation recreational facilities, and all improvements of whatever kind and for whatever purpose from time to time located on the common areas and other such property in good order and repair, provided, however, that notwithstanding the foregoing the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, but may use all legal means to force such Owner to maintain the same himself.

(d) To the extent not assessed to or paid by

the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the common areas.

(e) Unless provided by a municipal, county or other governmental agency, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ or otherwise provide police and refuse disposal services.

(f) The Association shall obtain and maintain in force the following policies of insurance:

(1) fire and extended coverage insurance on all improvements from time to time owned by the Association and located upon or within any common area, the amount of such insurance to be not less than ninety per cent (90%) of the aggregate full insurable value, meaning the actual replacement value (exclusive of the cost of excavation, foundations and footings) of such improvement as from time to time determined by the Association;

(2) bodily injury liability insurance with limits of not less than \$500,000 per person and \$1,000,000 per occurrence, insuring against and all liabilities with respect to Mililani Town or any portion thereof, or arising out of the ownership, maintenance or use thereof; and

(3) property damage liability insurance with deductible of not more than \$2,000 and a limit of not less than \$500,000 per accident.

The policy or policies of insurance referred to in subparagraphs (2) and (3) above shall name as insureds (i) the Association and its officers, the Board and its members, the Design Committee and its members and the employees of the Association, Board and Design Committee; and (ii) with respect to any liability arising out of the maintenance and use of the common areas, the Owners. 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 insured or insurers to pay any amounts 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 Mililani Town Restrictions, shall expressly waive any and all rights of subrogation against the Declarant, its representatives

and employees, and any Owner.

The Association may also obtain and maintain in force any policies of insurance covering any other reasonable risks as may be determined to be proper and necessary or advisable in the discretion of the Board.

(g) The Association shall accept and act upon applications submitted to it for the development of facilities on the common areas.

(h) The Association shall from time to time make, establish, promulgate, amend and repeal the Mililani Town Rules as provided for in section 5.06.

(i) To the extent provided for in section 4.01, the Association shall exercise its rights to appoint and remove members of the Design Committee to insure that at all reasonable times there is available a duly constituted and appointed Design Committee.

(j) The Association shall have all the powers set forth in the Mililani Town Restrictions, including, without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by Mililani Town Restrictions, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of Mililani Town Restrictions, the Mililani Town Rules and the Design Committee Rules.

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

The Association shall have all the powers set forth in the Charter, together with its general powers as a nonprofit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Charter and By-Laws and in the Mililani Town Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of Mililani Town 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 or for the peace, health, comfort, safety and/or general welfare of the Owners of Mililani Town. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power

and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any private area or cotenancy area, for the purpose of maintaining and repairing any such area, if for any reason whatsoever the Owner or Owners thereof fails to maintain and repair such area as required under Article III hereinabove or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any roads, sidewalks, schools, parks or other public areas in or adjoining Mililani Town, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Directors, have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and 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 of Mililani Town Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Mililani Town Restrictions.

(b) In fulfilling any of its obligations or duties under the Mililani Town Restrictions, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of the common area, and to the extent necessary by the failure of the Owners thereof of private areas, or in exercising any of its rights to construct improvements or other work upon any common area, including, without limitation, any recreational facility, the Association shall have the power and authority:

(1) to contract and pay for or otherwise provide for the maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon common areas, and to contract and pay for or otherwise provide for the construction of improvements or other work upon common areas, or otherwise in carrying out its functions as set forth in the Mililani Town Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;

(2) to obtain, maintain and pay for such

insurance policies or bonds whether or not required by section 5.04 as the Association may deem to be appropriate for the protection or benefit of Mililani Town, the Association, the members of the Board, the members of the Design Committee, or the Owners, including but without limitation, war risk insurance, builders' risk, workmen's compensation insurance, malicious mischief insurance, automobile, non-ownership insurance and performance and fidelity bonds;

(3) to contract and pay for, or otherwise provide for such utility services including, but without limitation, water, sewer, garbage, electrical, telephone and gas services as may from time to time be required;

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

(5) to contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of Mililani Town, any property located within Mililani Town, and the Owners;

(6) to contract and pay for, or otherwise provide for such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any common areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) The Association shall have the power and authority from time to time to grant and convey to any third parties for reasonable compensation and on such other terms as the Board may approve such easements, rights-of-way, parcels or strips of land in, on, over or under any common area, for the purpose of:

(1) constructing, directing, operating and maintaining thereon, therein and thereunder, public roads, streets, walks, driveways, parkways and park areas;

(2) installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith; and

(3) constructing, operating and maintaining public and private sewers, storm water drains, land drains and water systems, sprinkler systems, water, heating and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a manager to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under the Mililani Town Restrictions, 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 \$10,000 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.

(e) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the common area, or upon any personal property belonging to the Association, provided, however, that prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.

(f) The Association shall have the authority 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 to the amount, for any purpose within the powers and authority of the Association under

this Article V 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 in fee 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 each class of members 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.

All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Owners, or in improving the properties of the Association.

**Section 5.06 -  
Mililani Town  
Rules.**

(a) The Association may from time to time and subject to the provisions of the Mililani Town Restrictions, adopt, amend and repeal rules and regulations to be known as the Mililani Town Rules governing, among other things:

- (1) the use of common areas, including without limitation the recreational facilities;
- (2) the use of roads;
- (3) the collection and disposal of refuse;
- (4) the burning of open fires; and
- (5) the maintenance of animals within Mililani Town.

(b) With respect to subparagraph (a)(1) above, the Mililani Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Mililani Town for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of common areas by any Owner or by the family, invitees, licensees, or lessees of such Owner.

(c) With respect to subparagraph (a)(2) above, the Mililani Rules may without limitation provide for:

- (1) parking restrictions and limitations;

(2) maximum speeds for vehicular traffic on roads other than public roads;

(3) the time or times when commercial vehicles may be permitted to use roads other than public roads; and

(4) the type or types of vehicles other than conventionally equipped passenger automobiles which may be permitted to use the roads other than public roads.

(d) A copy of the Mililani Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or any assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and duplicate copies thereof shall be delivered to each Owner on his acquisition of a lot, and a copy of each new rule or of any amendment of an existing rule and notice of repeal of any rule shall be given to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Mililani Rules shall have the same force and effect as if they were set forth and were a part of the Mililani Town Restrictions. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

**Section 5.07 - Liability of Member of the Board.** No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Design Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

**Section 5.08 - Exclusive Powers of the Association.** The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of section 5.05.

## Article VI Funds and Assessments

**Section 6.01 - Operating Fund.** There shall be an operating fund in which the Association shall deposit all monies paid to it as:

- (1) maintenance assessments;
- (2) special assessments;
- (3) use fees paid by users of recreational facilities;
- (4) miscellaneous fees; and
- (5) income and profits attributable to the operating fund

and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

**Section 6.02 - Maintenance Assessment.** (a) Within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V (including a reasonable provision for contingencies, reconstruction and replacements, and for alterations, modifications and improvements to existing recreational facilities, but excluding any development of substantial new recreational facilities) and in paying all fees and expenses of the Design Committee and its operations, and shall subtract from such estimate:

- (1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to maintenance assessments; and
  - (2) the estimated receipts for all use fees to be collected from users of recreational or other facilities during such fiscal year.
- (b) The sum or net estimate determined

pursuant to paragraph (a) shall be divided and assessed by the Board as a maintenance assessment against the Owners, excluding those exempt pursuant to any provision of the Mililani Town Restrictions, in proportion to the numbers of lots owned by each Owner, excluding as aforesaid; provided, however, that the maximum annual assessment for the year 1968 shall not exceed a rate of \$180.00 per year (to be prorated for any portion of a year) per lot, and for any subsequent year shall not exceed an amount which shall bear the same relationship to said annual rate for 1968 that the Cost of Living Index as of January first of the year for which the assessment is to be levied bears to the Cost of Living Index as of January 1, 1968, unless such excess be approved by the affirmative vote of 66% of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, provided that such affirmative vote of Class A members shall constitute not less than 20% of the total Class A members. Written notice of such meeting must be sent to all members not less than 30 nor more than 60 days in advance of the meeting, setting forth the purpose of the meeting.

(c) If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above, subject to the maximum therein expressed.

(d) Maintenance assessments shall be due and payable by the Owners to the Association in equal quarterly installments on or before the first day of each January, April, July and October, or in such other manner as the Association shall designate, but not in advance in any amount in excess of the estimate for the full year.

**Section 6.03 - Special Assessment.** The Board shall levy a special assessment against any Owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Mililani Town Restrictions, the Mililani Rules or the Design Committee Rules, monies were expended from the operating fund by the Association in performing its functions under the Mililani Town Restrictions.

Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, engineers' architects', attorneys' and accounts' fees where reasonably incurred by the Association.

**Section 6.04 - Association, Declarant and Other Exemptions.** 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 VI as follows: (a) the Association shall be wholly exempt; (b) Declarant shall be exempt to the extent of 80% of the assessment per lot, until such time as it shall have completed any residence (other than a model home for display purposes) on such lot; and (c) those specified in section 3.08 shall be wholly exempt.

**Section 6.05 - Default in Payment of Assessments.** (a) Each assessment under this Article VI shall be a separate distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at ten per cent (10%) and costs, including reasonable attorneys' fees, shall be and become a lien upon the lot or lots of such Owner upon recordation by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the lot or lots of such Owner, and the sale or transfer of any lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as a mortgage of real

property, and the Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any lot or lots 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 as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

## Article VII Miscellaneous Provisions

- Section 7.01 - Amendment or Repeal - Duration.**
- (a) In addition to the rights reserved to the Declarant pursuant to section 2.02 to modify or supplement the Mililani Town Restrictions with respect to property annexed to Mililani Town, and unless specifically provided to the contrary herein, the Mililani Town Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Mililani Town, and any limitation, restriction, covenant or condition thereof may, at any time, be amended or repealed upon the happening of all of the following events:
- (1) the vote of Owners having not less than three-fourths (3/4ths) of the total votes of each class of Owners of lots within Mililani Town, approving the proposed amendment or amendments or the repeal of Mililani Town Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Mililani Town Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be;
  - (2) the recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Mililani Town Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph;
  - (3) the recordation of a written instrument also setting forth in full said amendment or amendments to the Mililani Town Restrictions, executed by the Owners having not less than three-fourths (3/4ths) of the total votes of each class of Owners of lots within Mililani Town; and
  - (4) as long as there is a Class B membership, the approval of the Federal Housing Administration or its successor.
- (b) All of the limitations, restrictions, covenants

and conditions of the Mililani Town Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Mililani Town, to the Owners and to the Association, subject, however, to the right to amend and repeal as provided in paragraph (a) above, for a period of twenty-one (21) years following the death of the survivor of Lyndon

B. Johnson, President of the United States, and all his descendants living on the day and year first above written, but not beyond the year 2000 A.D., provided, however, that unless within one (1) year prior to the expiration of said twenty-one (21) year period or prior to December 31, 1999, whichever first occurs, there shall be recorded an instrument directing the termination of the Mililani Town Restrictions signed by the Owners of not less than two-thirds (2/3ds) of the lots within the Mililani Town, the Mililani Town Restrictions then in effect immediately prior to the expiration date shall, subject to the provisions of paragraph (a) above, be continued automatically without further notice for an additional period of ten (10) years, and thereafter for successive periods of ten (10) years each unless, within one (1) year prior to the expiration of any such period, the Mililani Town Restrictions shall be terminated as set forth above in this paragraph (b).

**Section 7.02 - Enforcement, Non-Waiver.**

(a) Except to the extent otherwise expressly provided herein, the Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Mililani Town Restrictions upon other Owners or upon any property within the Mililani Town, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. No entry upon the lot of any Owner or other action to enforce any such limitation, restriction, covenant, condition, obligation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default or breach involved.

(b) 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 the Mililani Town Restrictions upon the Mililani Town Association, provided, however, anything herein to the contrary notwithstanding, no Owner as such shall have any right to enter upon the property 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.

(c) Every act or omission whereby any restriction, condition or covenant of the Mililani Town Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraphs (a) and (b) above, provided, however, that any provision to the contrary notwithstanding only the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own action without authority of a court having jurisdiction.

(d) Each remedy provided for in the Mililani Town Restrictions is cumulative and non-exclusive.

(e) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Mililani Town Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provisions of the Mililani Town Restrictions in another case against or with respect to the same Owner or lot or any other Owner or lot.

**Section 7.03 - Construction, Compliance with Laws, Severability, Singular and Plural, Titles.**

(a) All of the limitations, restrictions, covenants and conditions of the Mililani Town Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of Mililani Town as set forth in the introductory paragraphs of this Declaration.

(b) No provision of the Mililani Town Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Mililani Town or any part thereof. Anything in the Mililani Town Restrictions to the contrary notwithstanding, if all uses to which a lot may be put under the

provisions of the Mililani Town Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Mililani Town Restrictions which can lawfully apply to the lot as so used.

(c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of Mililani Town shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

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

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

**Section 7.04 -  
Subdivision  
and  
Consolidation.**

(a) No lot within the Mililani Town shall be subdivided by any Owner, unless the same has been first approved by the Design Committee to which application shall be made, together with a reasonable fee as required by the Design Committee. The Design Committee shall review the same to determine whether or not the same complies with the basic intent and purposes of the Mililani Town Restrictions and to determine whether or not any Owner or the Owners of lots within Mililani Town will be prejudiced as a result of such subdivision. The Design Committee shall approve or disapprove the same within thirty (30) days after such subdivision map has been submitted to it and in the event of disapproval shall give written notice of the reasons therefor. Failure to disapprove within said period of thirty (30) days shall be deemed approval thereof. The Design Committee shall furnish to the Owner of any map which has been approved on his request a certificate executed by one of the members thereof, stating that the map has been so approved.

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

(c) The provisions of section 4.08 shall be applicable to this section 7.04 also.

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

**Section 7.05 -  
Conveyance of  
Common  
Area;  
Reservation of  
Easements and  
Right-of-Way  
and  
Classification  
of Land Area,  
Sewer &  
Water System.**

(a) The Association shall accept all of the real property and interests in real property conveyed to it as common area by the Declarant, provided that the Association need not accept any such property in fee subject to any exceptions, liens and encumbrances except as follows:

(1) the lien of any real property taxes and assessments non-delinquent;

(2) 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 in accordance with the provisions of the Mililani Town Restrictions;

(3) such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant for access to real property contiguous to the common area, and 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 or for the benefit of the United States of America, the State of Hawaii, the City and County of Honolulu, or any other political subdivision or public organization, any public utility corporation, or any lot for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder at any time or at any time in the future, (aa) roads, streets, driveways, walks, parkways and park areas, (bb) poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and for necessary facilities in connection therewith, and (cc) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, water sprinkler systems, water, heating and gas lines or pipes, and any and all equipment in connection therewith;

(4) the obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the City and County of Honolulu or any other political subdivision or political or governmental organization having jurisdiction over such property;

(5) the rights reserved to the Declarant pursuant to paragraph (d) of section 7.05;

(6) easements for roads, pipelines, ditches, telephone, gas and electric lines and any other utilities in favor of public utilities, governmental agencies or private corporations or individuals; and

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

(b) The Declarant may convey to the Association the sewer treatment plant and system serving Mililani Town after the same has been constructed on Lot 85-A as shown on Map 243 filed with Land Court Application 1000, together with said lot and all easements and other appurtenances thereto, and may also convey to the Association the water supply system serving Mililani Town, or parts thereof, including the well site and the reservoir site, being Lots 2130-B-1 and 2137 as shown on

Maps 242 and 241, respectively, filed with said Land Court Application 1000, together with all easements and other appurtenances thereto, and the Association shall accept said sewer treatment plant and system or said water supply system, or both, together with all obligations and responsibilities pertaining thereto or to the operation thereof, and shall thereafter keep, maintain and operate the same, provided, that Declarant shall indemnify the Association against any mechanics' and materialmen's liens arising out of the construction by it of said sewer plant and system or water supply system. After such conveyance, the Declarant may from time to time at its own expense construct extensions and enlargements of said facilities serving the area included in Mililani Town at the time of such conveyance, or adjacent lands,

and may join and incorporate such extensions and enlargements with the original facilities so conveyed, and the Association shall accept such extensions and enlargements and keep, maintain and operate them along with the initial facilities. The expense of keeping, maintaining and operating all such facilities shall be borne by the Association after such conveyance and an assessment shall be levied therefor in the same manner as provided for the maintenance assessment under Article VI, and all provisions in this Declaration for collection of maintenance assessments shall apply equally to assessments for keeping, maintaining and operating all such facilities, including without limitation, the lien provisions, and provided that the Declarant covenants and agrees to and with the Association that, until such time as it has sold 500 lots, it will contribute in cash each year to the Association to help defray the expenses of such keeping, maintenance and operation, a share of such expenses in the proportion that the number of lots less than 500 not sold bears to 500. In the case of the water system, the Association shall charge users at the rate approved by the Public Utilities Commission, if any, otherwise at the same rate charged by the Board of Water Supply for equivalent service, and the expenses for which assessments shall be levied by the Association shall be limited to any excess over such revenues. The Association shall maintain accounts regarding sewer and water facilities separate from other funds of the Association and all revenues received in connection therewith shall be applied only toward the expenses thereof. To the extent that said sewer treatment plant or water system shall actively serve adjacent lands not in Mililani Town pursuant to the rights of the Declarant to extend or enlarge said facilities as hereinabove set forth, the obligation of the Association to provide such service shall be conditioned on the following:

(a) the cost of any such extension or enlargement shall not be borne by the Association; (b) the capacity of the facilities are adequate to handle such extension or enlargement or shall be made so without cost to the Association; (c) the Declarant or other owners of such adjacent lands shall pay assessments for service at the same rate as paid by an Owner; and (d) the assessments for service shall be made enforceable by liens equivalent to the liens on the lots of the Owners under the provisions of Article VI hereof.

The Association may at any time convey and transfer said facilities or any part thereof to City and County of Honolulu or other governmental agency authorized and able to continue operation thereof. Said facilities, while so owned by the Association, shall not be deemed common area.

(c) The land classification of any property within Mililani Town which is not a common area may be changed to a common area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property. Notwithstanding anything else herein, the Declarant may change the land classification of any property not previously designated as common area as to which it is the Owner and may convey such property to the Association pursuant to the provisions of section 7.05(a) hereinabove, and the Association shall accept the same and such property shall thereupon become common area for all purposes hereunder.

(d) At any time and from time to time following conveyance of common area by the Declarant to the Association pursuant to this section, the Declarant may construct, reconstruct, refinish or alter any improvement upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such common area if the Declarant shall determine that any such work (i) is reasonably necessary for any utility installation serving any property within Mililani Town, (ii) is reasonably necessary for the construction of any facility for use by the Owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such common area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of Mililani Town.

**Section 7.06 -  
Assignment of  
Powers.**

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

**Section 7.07 -** If at any time or from time to time all or any

**Condemnation of Common Arrea.** portion of the common area or any interest there be taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to 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 which shall in its name alone represent the interest of all Owners.

**Section 7.08 -  
Obligations of  
Owners,  
Avoidance,  
Termination.**

(a) No Owner through his non-use of any common area, including any recreational facility, or by abandonment of his lot, may avoid the burdens or obligations imposed on him by the Mililani Town Restrictions by virtue of his being an Owner.

(b) 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 and payable after the date of such transfer, and no person after the termination of his status as an Owner and prior to his again becoming an Owner shall incur any of the obligations or enjoy any of the benefits of an Owner under the Mililani Town Restrictions following the date of such termination.

**Section 7.09 -  
Notices,  
Documents,  
Delivery.**

(a) Any notice or other document permitted or required by the Mililani Town Restrictions 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 Mililani Town 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 Design Committee twenty-four (24) hours after a copy of the same has been deposited in the same manner addressed to the Design Committee in care of the Mililani Town Association at the latter's then current address.

The post office address of an Owner shall be the street address in Mililani Town 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.

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

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

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

In Witness Whereof, the Declarant has executed this Declaration the day and year first above written.

MILILANI TOWN, INC.

(Seal) By Alfred Boeke  
Its Vice President

By George Yim  
Its Secretary

**State of Hawaii**  
**City and County of Honolulu ss:**

On this 19th day of April, 1968, before me appeared Alfred Boeke and George Yim, to me personally known, who, being by me duly sworn, did say that they are Vice-President and Secretary, respectively, of Mililani Town, Inc. a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said Alfred Boeke and George Yim acknowledged the instrument to be the free act and deed of said corporation.

Masae Hisaoka  
Notary Public, First Circuit  
State of Hawaii

(Seal)

My Commission Expires: 5/31/68

## **Exhibit A**

### **Property subject to Declaration**

Those certain parcels of land situated in District of Ewa, City and County of Honolulu, State of Hawaii, more particularly described as follows:

Lots 2142 to 2152, inclusive,  
Lots 2154 to 2185, inclusive,  
Lots 2187 to 221 1, inclusive,  
Lots 2213 to 2273, inclusive, and  
Lot 2275;

All of said Lots being shown on Map 248, filed in the Office of the Assistant Registrar of the Land Court with Land Court Application No. 1000, and being portions of the land described in Certificate of Title No. 116,965.

## **Exhibit B**

### **Articles of Incorporation of Mililani Town Association**

**Department of Regulatory Agencies  
State of Hawaii**

In the Matter of the Incorporation  
of  
Mililani Town Association

Petition for Charter of Incorporation  
To the Director of Regulatory Agencies  
of the State of Hawaii:

The undersigned, Alfred Boeke, George H. DeBacker and George Yim, all of whom are residents of the State of Hawaii, desiring to obtain a charter of incorporation for the purposes set forth in Section 172-16, Revised Laws of Hawaii 1955, as amended, respectfully pray that they be granted a Charter of Incorporation in the form of the accompanying proposed form of charter of incorporation, which contains the particulars required by Section 172-17, Revised Laws of Hawaii 1955, as amended.

**Dated:** Honolulu, Hawaii, April 17, 1968.

/s/ Alfred Boeke  
/s/ G. H. DeBacker  
/s/ George Yim

**State of Hawaii**  
**City and County of Honolulu ss**

Alfred Boeke, George H. DeBacker and George Yim, being first duly sworn, on oath, severally depose and say: That they are the petitioners above named; that they have read the foregoing petition and know the contents thereof and that the matters therein set forth are true.

/s/ Alfred Boeke  
/s/ G. H. DeBacker  
/s/ George Yim

Subscribed and sworn to before me  
this 17th day of April, 1968.

/s/ Masae Hisaoka  
Notary Public, First Circuit,  
State of Hawaii

My Commission expires: May 31, 1968

**Department of Regulatory Agencies**  
**State of Hawaii**

In the Matter of the Incorporation  
of  
Mililani Town Association

Charter of Incorporation

To all whom these presents shall come:

I, Edwin H. Honda, Director of Regulatory  
Agencies of the State of Hawaii, send Greetings:

**Whereas**, Alfred Boeke, George H. DeBacker and George Yim, all of whom are residents of the State of Hawaii, have signed, verified and filed with me as Director of Regulatory Agencies of the State of Hawaii, a petition to grant them a Charter of Incorporation for purposes provided in Section 172-16, Revised Laws of Hawaii 1955, as amended, in the form hereof;

**Now, therefore**, know ye that I, Edwin H. Honda, as Director of Regulatory Agencies of the State of Hawaii, and in execution of every power and authority in any wise enabling me in this behalf, hereby in accordance with the provisions set forth in Sections 172-16 and 172-17, Revised Laws of Hawaii 1955, as amended, grant to the said Alfred Boeke, George H. DeBacker and George Yim, a Charter of Incorporation for the purposes and in the form hereinafter set forth:

- First** The name of the corporation shall be "Mililani Town Association."
- Second** The location of the corporation shall be in Waipio and Waikakalaua, District of Ewa, in the City and County of Honolulu, State of Hawaii, and the specific address of its initial office shall be 401 Kamakee Street, Honolulu, Hawaii.
- Third** The purpose for which the corporation is organized is to provide for the management, maintenance, protection, preservation, architectural control and development of property in the District of Ewa, City and County of Honolulu, State of Hawaii, within the area known as "Mililani Town" and to promote the health, safety and welfare of its members.
- Fourth** In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to chartered

nonprofit corporations, the corporation shall have succession and existence in perpetuity and shall have and exercise any and all powers, rights, privileges and immunities which are now or may hereafter be secured by law to chartered nonprofit corporations organized under the laws of the State of Hawaii. Without limitation as to other powers stated or referred to in this Charter, the corporation shall have the following powers:

(a) It may exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions applicable to the property and filed or to be filed in the Office of the Assistant Registrar of the Land Court of Hawaii and recorded or to be recorded in the Bureau of Conveyances of Hawaii, and as the same may be amended from time to time as therein provided, hereinafter called the "Declaration."

(b) It may fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association. The term "Association" as used herein shall have the meaning given it in the Declaration and shall be synonymous with the term "corporation" as used herein.

(c) It may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

(d) It may borrow money, and mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the provisions of Article XII herein.

**Fifth** The corporation is not organized for profit, it shall not issue any stock, and no part of its assets, income or earnings shall be distributed to its members, directors or officers, except for services actually rendered to the corporation.

**Sixth** There shall be a Board of Directors of the

corporation to consist of not less than three nor more than nine directors, and the initial Board of Directors shall consist of six directors. No less than one-third of the members of the Board of Directors shall be residents of the State of Hawaii, and in the absence of such one-third membership the Board of Directors shall not function. Subject to the foregoing, the number of directors shall be fixed each year by the members of the corporation at their annual meeting. The members of the Board of Directors shall be elected or appointed at such times, in such manner and for such terms, subject to the provisions set forth in this Article VI, as may be prescribed by the By-Laws, which also may provide for the removal of directors and the filling of vacancies and may provide that the remaining members of the Board of Directors, although less than a majority thereof, may by the affirmative vote of the majority of such remaining members, fill vacancies in the Board of Directors, including temporary vacancies caused by the illness of directors or the temporary absence of directors from the State of Hawaii. The directors need not be members of the corporation. The Board of Directors shall have full power to control and direct the business and affairs of the corporation and to manage its properties, subject, however, to instructions by the members of the corporation and to any limitations which may be set forth in statutory provisions, in this Charter, in the By-Laws, or in the Declaration.

The names, residence addresses and initial tenure of office of the persons who are to act as the initial directors of the corporation are as follows:

To hold office until the first annual meeting of the members of the corporation,

Name	Residence Address
Peter M. Amcotts	45-129 Mahalani Circle Kaneohe 96744
Herbert L. Kyle	2355 Ala Wai Blvd., Honolulu 96815

To hold office until the second annual meeting of the members of the corporation,

Name	Residence Address
George DeBacker	1645 Ala Wai Blvd., Honolulu 96815

James F. Haskins	432 Iliaina St., Kailua 96734
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To hold office until the third annual meeting of the members of the corporation,

Name	Residence Address
Alfred Boeke	247 Kaalawai, Honolulu 96816

George Yim	2445 Ferdinand Ave., Honolulu 96822
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**Seven** The officers of the corporation shall consist of a President, one or more Vice Presidents as may be prescribed by the By-Laws, a Secretary, a Treasurer, and such other officers and assistant officers and agents as may be prescribed by the By-Laws. The officers shall be elected or appointed, hold office and may be removed as may be prescribed by the By-Laws. No officer need be a director or a member of the corporation, except that the President shall be elected from among the directors. Any two or more offices may be held by the same person.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the By-Laws, or as may be determined by resolution of the Board of Directors not inconsistent with the By-Laws.

The names and residence addresses of the four persons who are to act as the initial officers of the corporation are as follows:

George DeBacker, President	1645 Ala Wai Blvd., Honolulu 96815
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Name	Residence Address
Alfred Boeke, Vice President	247 Kaalawai St., Honolulu 96815

James F. Haskins Secretary	432 Iliaina St., Kailua 96734
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Herbert L. Kyle, Treasurer	2355 Ala Wai Blvd., Honolulu, 96815
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**Eight** Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, the "Owner" of any lot (within Mililani Town) as defined in the Declaration shall be a member of the corporation. The term "lot" as used herein shall have the meaning given it in said Declaration. Proof of status as an "Owner" of any such lot for purposes of establishing membership in the corporation shall be furnished in accordance with the provisions pertaining thereto set forth in the By-Laws. Membership shall be appurtenant to and may not be separated from the ownership of any such lot, and such ownership shall be the sole qualification for membership in the corporation.

**Nine** The corporation shall have two classes of voting membership:

**Class A.** Class A members shall be the owners, as defined in Article VIII hereof, of lots, excepting the Class B member as hereinafter defined. The beneficial owner, or owners in the aggregate, of any lots, whether individuals, corporations or other legal entities, shall be entitled to one vote per lot. If more than one person or entity owns one given lot, any one of said persons or entities may exercise said one vote on behalf of all the owners of said lot, but no such vote shall be exercised without the unanimous consent of all such persons or entities.

**Class B.** The Class B member shall be the Declarant as defined in the Declaration. The Class B member shall be entitled to three votes per lot beneficially owned by it. The Class B membership shall cease and be converted to Class A membership December 31, 1983.

**Ten** Additional property may be annexed to the area specified in Article III hereof, and so add to the membership of the corporation under the provisions of Article VIII hereof, pursuant to the terms and conditions of Article 11 of the Declaration, as the same now exists or as the same may from time to time be amended.

**Eleven** The property of the corporation shall alone be liable in law for the payment of its debts and the discharge of its obligations. Neither the members of the corporation, nor the members of the Board of Directors, nor the members of the Design Committee provided in the Declaration, nor any of the officers shall have

any personal liability for the payment of such debts or the discharge of such obligations, except that the members of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as in the Declaration provided.

**Twelve**

Any exchange, sale or other disposition of any real property of the corporation in fee and any borrowing of money or mortgaging of the common areas as defined in the Declaration shall require the affirmative vote of members as set forth in Article V of the Declaration.

**Thirteen**

No voluntary dissolution of the corporation or liquidation of its assets shall take place without the assent of three-fourths in voting interest of the members of each class of the corporation, obtained by vote at a meeting of the members of the corporation duly called and held for the purpose of authorizing such dissolution or liquidation. Written notice, setting forth the purpose of the meeting shall be given to all members not less than 30 days in advance of the meeting. Upon any such dissolution or liquidation the assets of the corporation, whether real, personal or mixed, shall be dedicated to one or more appropriate public agencies to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to charitable purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the corporation. To the extent permitted by law, the corporation may participate in mergers and consolidations with other nonprofit corporations organized for similar purposes, provided that any such merger or consolidation shall have the assent of two-thirds in voting interest of the members of each class of the corporation, obtained as herein provided in the case of dissolution,

**Fourteen**

No contract or other transaction between the corporation and any other person, firm, corporation, association or other organization, and no act of the corporation, shall in any way be affected or invalidated by the fact that any of the directors or officers of the corporation are parties to such contract, transaction or act or are pecuniarily or otherwise interested in

the same or are directors or officers or members of any such other firm, corporation, association or other organization, provided that the interest of such director or officer shall be disclosed or shall have been known to the Board of Directors authorizing or approving the same, or to a majority thereof. Any director of the corporation who is a party to such transaction, contract, or act or who is pecuniarily or otherwise interested in the same or is a director or officer or member of such other firm, corporation, association or other organization, may be counted in determining a quorum of any meeting of the Board of Directors which shall authorize or approve any such contract, transaction or act and may vote thereon with like force and effect as if he were in no way interested therein. Neither any director nor any officer of the corporation, being so interested in any such contract, transaction or act of the corporation which shall be approved by the Board of Directors of the corporation, nor any such other person, firm, corporation, association or other organization in which such director or officer may be interested or of which such officer or director may be a director, officer or member, shall be liable or accountable to the corporation, or to any member thereof, for any loss incurred by the corporation pursuant to or by reason of such contract, transaction or act, or for any gain received by any such other party pursuant thereto or by reason thereof.

**Fifteen**

The corporation shall indemnify each present and future officer and director of the corporation and each person who serves at the request of the corporation as an officer or director of any other corporation whether or not such person is also an officer or director of the corporation, against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such officer or director, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such officer or director, whether or not he continues to be such officer or director at the time of the incurring or imposition of such costs, expenses or liabilities,

except such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his negligence or willful misconduct toward the corporation in the performance of his duties as such officer or director. As to whether or not a director or officer was liable by reason of negligence or willful misconduct toward the corporation in the performance of his duties as such officer or director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each officer and director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such officer or director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such officer or director.

**Sixteen** This Charter may be amended by the vote of two-thirds of the entire membership of each class of the corporation.

Granted under my hand and the seal of the Office of the Director of Regulatory Agencies of the State of Hawaii, this 18th day of April, 1968.

/s/ Edwin H. Honda  
Director of Regulatory Agencies  
State of Hawaii

(Seal) By /s/ James F. Williams  
Corporation & Securities Registrar

## Exhibit C By-Laws of Mililani Town Association

### Article 1. 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 Mililani Town) 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 Mililani Town) 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 IX of the Charter 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 March, April or May, 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 Charter 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 100 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 Charter of Incorporation, the Declaration, or these By-Laws.

**Article II.**  
**Board of Directors**

**Section 1.** (a) There shall be a Board of Directors of the corporation of not less than three nor more than nine members, and until the members of the corporation shall otherwise determine, the Board of Directors shall consist of six 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 be classified by dividing them into three classes, presently including two directors each, as follows: first class, Peter M. Amcotts and Herbert L. Kyle; second class, George DeBacker and James F. Haskins; third class, Alfred Boeke and George Yim. The directors of the first class shall hold office until the first annual meeting of the members of the corporation, at which time the successors of the first class of directors shall be elected for a term of three years. The directors of the second class shall hold office until the second annual meeting of the members of the corporation; and the directors of the third class shall hold office until the third annual meeting of the members of the corporation. At each annual election of directors, the successors to the class of directors whose terms shall expire in that year shall be elected directors for a term of three years, so that the term of office of one class of directors shall expire each year, but each director of whatever class, shall hold office until his successor shall have been elected and shall qualify, or until his death, or until he shall resign or shall have been removed in the manner herein provided. Except with respect to their respective terms of office, all directors shall have equal powers. In case of any increase in the number of directors, each class shall be respectively increased so that after any such increase, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors. In case of any decrease in the number of directors, each class shall be decreased so that after any such decrease, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors. 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 Charter 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 Design 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.

### **Article III. Officers and Agents**

**Section 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 stockholders 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 Directors 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 to 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 and 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 documents 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%) in voting interest of each class of 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.

(Seal) These By-Laws are hereby adopted this 2nd day of May, 1968, in Honolulu, Hawaii.

/s/ Alfred Boeke  
/s/ G. H. DeBacker  
/s/ George Yim

James F. Haskins, secretary of Mililani Town 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 2nd day of May, 1968 and are still in force and effect.

Witness the hand of the undersigned this 2nd May, 1968.

/s/ James F. Haskins

## **Certification of the Members' Adoption of Amendments to the Bylaws of Mililani Town Association**

**WHEREAS**, Mililani Town Association, a Hawaii nonprofit corporation ("MTA") was created by the Charter of Incorporation filed with the Director of Regulatory Agencies of the State of Hawaii on April 18, 1968.

**WHEREAS**, the By-Laws of Mililani Town Association ("By-Laws") were adopted by the Board of Directors of MTA on May 2, 1968.

**WHEREAS**, Article VI, Section 1 of the By-Laws provides that the By-Laws may be amended or repealed and new By-Laws may be adopted, by action of not less than a seventy-five percent (75%) in voting interest of each class of members 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.

**WHEREAS**, the annual meeting of MTA was held on March 21, 2018.

**WHEREAS**, a quorum of the members were present at said annual meeting.

**WHEREAS**, said annual meeting of MTA was duly noticed and the notice stated one of the purposes of the meeting was to consider the amendment of the By-Law amendments described herein.

**WHEREAS**, the notice of the meeting also included a copy of the proposed amendment to the By-Laws.

**WHEREAS**, at least seventy-five percent (75%) in voting interest of each class of members at the meeting voted in favor of the amendments.

**WHEREAS**, the By-Laws were not included in MTA's recorded Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), but an unexecuted, unadopted form of the By-Laws was attached as Exhibit C to the CC&Rs, stating that the By-Laws substantially in the form attached as Exhibit C shall be adopted.

**WHEREAS**, the CC&Rs and the By-Laws do not require that amendments to the By-Laws be recorded.

**WHEREAS**, neither Hawaii Revised Statutes ("HRS") Chapter 421J nor Chapter 414D requires that By-Laws be recorded.

**NOW THEREFORE**, it is hereby certified that the following amendments to the By-Laws was duly amended pursuant to Article VI, Section 1 of the By-Laws at the annual meeting held on March 21, 2018:

### **Amendment No. One:**

Article I, Section 2 of the By-Laws were amended to read as follows:

Section 2. Voting Rights; Proxies.

(a) At any election by 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 IX of the Charter of Incorporation of the Corporation. Directors shall not be elected at meetings, but instead shall be elected as provided in Article II, Section 1 below.

(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. A proxy shall be valid for only a specified meeting of the corporation and any adjournments of that meeting. 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 may be signed by one of the persons constituting the member; provided that if there is an objection by any person constituting the member, the proxy must be signed by the people who hold a majority of the interest in the Lot. All such persons may attend meetings and the vote of any of the people constituting the member shall constitute the vote of the member; provided that if there is an objection by any person constituting the member, the vote must be by the people who holds a majority interest in the Lot.

**Amendment No. Two:**

Article I, Section 3(a) of the By-Laws were amended to read as follows:

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 March, April or May, 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 transaction of such business as may be brought before the meeting.

**Amendment No. Three:**

Article II, Section 1 of the By-Laws were amended to read as follows:

Section 1. Number; Election; Tenure; Vacancies.

(a) There shall be a Board of Directors of the corporation of not less than three nor more than nine members, and until the members of the corporation shall otherwise determine, the Board of Directors shall consist of six members. Subject to the foregoing limitations, the number of directors shall be fixed each year by the members of the corporation at a meeting of the members of the corporation held before the election (including at the previous 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 pursuant to this

section; and provided, further, that if in any year the number of directors is not fixed by the members of the corporation, the number of directors shall remain the same as in the previous year. No member of the Board of Directors need be a member of the corporation.

(b) The directors shall be classified by dividing them into three classes (presently including two directors each, as follows: first class, Peter M. Amcotts and Herbert L. Kyle; second class, George H. DeBacker and James F. Haskins; third class, Alfred Boeke and George Yim. The directors of the first class shall hold office until the first annual election of the directors by the members of the corporation, at which time the successors of the first class of directors shall be elected for a term of three years. The directors of the second class shall hold office until the second annual election of the directors by the members of the corporation; and the directors of the third class shall hold office until the third annual election of the directors by the members of the corporation. At each annual election of directors, the successors to the class of directors whose terms shall expire in that year shall be elected directors for a term of three years, so that the term of office of one class of directors shall expire each year, but each director of whatever class shall hold office until his successor shall have been elected and shall qualify, or until his death, or until he shall resign or shall have been removed in the manner herein provided. Except with respect to their respective terms of office, all directors shall have equal powers. In case of any increase in the number of directors, each class shall be respectively increased so that after any such increase, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors. In case of any decrease in the number of directors, each class shall be decreased so that after any such decrease, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors. 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) Directors shall be elected by ballot by the members of the corporation. Each year, at least one hundred twenty days (120) days before the election, the Association shall publish a notice in the newsletter or otherwise inform the members of the deadline to submit nominations for the upcoming election of directors and the method for submitting nominations. The nomination deadline shall be at least ninety (90) days before the election. No further nominations will be permitted after the nomination deadline. After the nomination deadline and at least thirty (30) days prior to the next meeting of the members of the corporation, the Association shall provide ballots to the members. Unless another record date is selected by the Board in accordance with law, the record date for determining the members entitled to vote shall be the date the Association provides the ballots to the members. All votes must be received by the secretary or other person designated on the ballot by 4:30 p.m., two (2) business days before the meeting of the members of the corporation. The results of

the election shall be announced at the meeting of the members of the corporation following the election. The Board may establish policies and procedures for the election of directors consistent with this Section.

(d) 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.

#### **Amendment No. Four**

Article II, Section 3 of the By-Laws were amended to read as follows:

##### **Section 3. Powers.**

(a) 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 Charter of Incorporation, by the Declaration or by these By-Laws.

(b) 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.

(c) 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 Design 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.

(d) The Board of Directors may, but shall not be obligated to, maintain or support certain activities within Mililani Town designed to make Mililani Town safer than they otherwise might be. Neither the Board of Directors nor the Association shall in any way be considered insurers or guarantors of security within Mililani Town. NEITHER THE BOARD OF DIRECTORS NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR

INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, AND THE DESIGN COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DESIGN COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES, ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES, HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN MILILANI TOWN.

CERTIFICATE

I, Josie Hart Kaanehe, Secretary of the Board of Directors of the Mililani Town Association, hereby certify that the foregoing is a true copy of the Certification of the Members' Adoption of Amendments to the Bylaws duly adopted at a meeting of the Board of Directors, duly held on the 21st day of March, 2018 and duly entered in the book of minutes of the Association, and that this Certification of the Members' Adoption of Amendments to the Bylaws is in full force and effect.

DATED: Honolulu, Hawaii, June 28, 2018

  
Secretary  
MILILANI TOWN ASSOCIATION

**Mililani Town Declaration of  
Covenants, Conditions and Restrictions**

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