

EWA BY GENTRY COMMUNITY AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

dated July 21, 1988, recorded in the
Office of the Assistant Registrar of the Land Court
of the State of Hawaii
as Land Court Document No. 1568352

Amended by Certificate of First Amendment of the
Ewa by Gentry Community Association
Declaration of Covenants, Conditions and Restrictions
dated May 30, 1989 recorded in the
Office of the Assistant Registrar of the Land Court
of the State of Hawaii
as Land Court Document No. 1652869

Amendments as required by the
Fair Housing Amendments Act of 1988

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**EWA BY GENTRY COMMUNITY AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION made this 21st day of July, 1988, by GENTRY DEVELOPMENT COMPANY, a registered Hawaii limited partnership, hereinafter referred to as the "DECLARANT", and GENTRY HOMES, LTD., a Hawaii corporation, both with their principal place of business and post office address at 94-539 Puahi Street, Waipahu, Island of Oahu, State of Hawaii;

WITNESSETH THAT:

WHEREAS, Declarant and Gentry Homes, Ltd. are the owners of certain real property in the District of Ewa, City and County of Honolulu, State of Hawaii, described in Exhibit "A" attached hereto and by reference made a part hereof (hereinafter referred to as the "Community Area") and the Community Area is part of a larger area of real property which the Declarant also owns or has the right to acquire and which is shown in Exhibit "B" attached hereto and by reference made a part hereof, (hereinafter referred to as "EWA by Gentry"); and

WHEREAS, Gentry Homes, Ltd. is a Controlled Entity of Declarant as hereinafter defined and described; and

WHEREAS, the Community Area and EWA by Gentry as a whole are part of a much larger area in the District of Ewa owned by the Trustees Under the Will and of the Estate of James Campbell, Deceased (hereinafter the "Campbell Estate"); and

WHEREAS, Declarant intends to develop EWA by Gentry as a planned residential community development which may include a variety of complementary uses and facilities along with parks and open space areas; and

WHEREAS, in order to insure the orderly and proper development and use of the Community Area in relation to EWA by Gentry and the Ewa lands of the Campbell Estate and to promote the quality of improvement and use of the Community Area and EWA by Gentry as a whole, Declarant deems it necessary and appropriate to subject all of the Community Area to certain mutual covenants, conditions, limitations and restrictions which will inure to the benefit of all present and future owners of property within the Community Area and EWA by Gentry and the Ewa lands of the Campbell Estate.

NOW, THEREFORE, Declarant and Gentry Homes, Ltd. hereby declare that all of the Community Area described in Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Declaration, all of which are hereby established and declared to be for the purpose of enhancing, protecting and preserving the value, desirability and attractiveness of the Community Area and to be for the direct, mutual and reciprocal benefit of each and every part of the Community Area, EWA by Gentry and the Ewa lands of the Campbell Estate. Said limitations, covenants, conditions and restrictions shall create mutual equitable servitudes upon each lot or site in the Community Area in favor of every other lot or site in the Community Area and shall create reciprocal rights and obligations in, between and among all persons and/or entities having any right, title or interest in and to the Community Area or any part thereof. In addition, said limitations, covenants, conditions and restrictions shall operate as perpetual covenants running with the land, binding according to the terms hereof on all persons and/or entities having or acquiring any right, title or interest in the Community Area or any part thereof.

**ARTICLE I
DEFINITIONS**

Unless the context of the particular provision otherwise specifies or requires, the terms defined in this Article I shall have for the purposes of this Declaration the meanings hereinafter specified:

ARCHITECT shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes (1985), as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

ASSOCIATION shall mean the EWA by Gentry Community Association, a non-profit corporation described in Article V and its successors.

BOARD shall mean the Board of Directors of the Association.

BY-LAWS shall mean the By-Laws of the Association which have been or shall be duly adopted by the Association.

CHARTER shall mean the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 415B of the Hawaii Revised Statutes, as amended.

COMMERCIAL AREA shall mean and be such real property as may be set aside for commercial development and use and which is or may be classified as such pursuant to Article III. For the purposes of this Declaration, any Private Recreational Area classified as such pursuant to Article III shall not be deemed a Commercial Area, notwithstanding the fact that such Private Recreational Area and the facilities thereon may be operated for profit.

COMMON AREA shall mean and be that real property (including drainage and flowage areas and open space areas and including improvements thereto held by the Association for the common use and benefit of the Owners) and classified as such pursuant to Article III. A Private Recreational Area classified as such pursuant to Article III shall not be deemed a Common Area notwithstanding the fact that such Private Recreational Area and the facilities thereon may be owned and operated by the Association.

CONDOMINIUM shall mean a Condominium Property Regime as defined in Chapter 514A of the Hawaii Revised Statutes, as amended.

CONTROLLED ENTITY shall mean and be a person or entity designated as such in the manner and with the consequences set forth in Section 7.10, "Controlled Entities of Declarant."

DECLARANT shall mean the party named above as the Declarant and/or the successors of that party as described and provided for in Section 7.09, "Successors of Declarant."

DESIGN COMMITTEE shall mean the Committee created pursuant to Article IV, "Improvement of Property."

DESIGN COMMITTEE RULES shall mean those rules adopted by the Design Committee pursuant to subsection 4.01(f).

ENGINEER shall mean a person registered to perform engineering services in the State of Hawaii under the authority of Chapter 464 of the Hawaii Revised Statutes, as amended, or registered pursuant to the provisions of the state laws of the state of his domicile.

EXCAVATION shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock to a depth of more than eighteen inches.

FAMILY shall mean the immediate family of an Owner or Owners (if ownership is by husband and wife) of a unit and the parents and siblings (but not members of their separate families) of such Owner or of either one of such Owners (if ownership is by husband and wife).

FILE shall mean with respect to any document or map, to record such document or map in the Bureau of Conveyances of the State of Hawaii and/or to file the same in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

FILL shall mean any addition of rock or earth materials to the surface of the land (except temporarily for planting) which increases the previous elevation of such surface by more than eighteen inches.

FISCAL YEAR shall mean the year from January 1st to and including December 31st or such other annual time period as may be designated by the Association.

EWA BY GENTRY COMMUNITY AREA shall mean all of the real property referred to in Section 2.01, together with such other real property from time to time added thereto under the authority of Section 2.02, "Addition of Property Subject to Restrictions."

EWA BY GENTRY COMMUNITY ASSOCIATION RULES shall mean the rules which may be adopted, amended or repealed from time to time pursuant to Section 5.06, "EWA by Gentry Community Association Rules."

IMPROVEMENTS shall mean and include buildings, roads, driveways, parking areas, fences, screens, retaining walls, stairs, drainage and flowage facilities, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind.

LOT shall mean a parcel of land in the Community Area created by legal subdivision and designated on a duly filed subdivision map which contains an area of not more than 10,000 square feet and is intended to be improved by construction of a dwelling unit thereon.

MAINTENANCE ASSESSMENT shall mean any assessment levied pursuant to Section 6.02, "Maintenance Assessments."

MANAGER shall mean the person or corporation appointed as such, pursuant to subsection 5.05(d).

OPERATING FUND shall mean the fund created pursuant to Section 6.01.

OWNER shall mean a person, corporation, partnership or other legal entity described as an owner in Section 5.02, "Membership."

PRIVATE RECREATIONAL AREA shall mean and be that real property and any improvements thereon developed for recreational activities on a user fee and/or membership basis, which real property is or may be classified as such pursuant to Article III. The recreational activities for which Private Recreational Areas may be developed and used shall be limited to golf, swimming, tennis and other racket sports, volleyball, basketball, archery, target and trapshooting, various field sports and such other activities as may be specifically approved and consented to in writing by the Campbell Estate.

RECORD shall mean with respect to any document, to record such document in the Bureau of Conveyances of the State of Hawaii and/or to file such document in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or both.

RECREATIONAL FACILITY shall mean any improvement used for or in connection with any recreational purpose or activity.

RESIDENTIAL AREA shall mean any real property classified as such pursuant to Article III, together with all improvements constructed thereon, which is developed to provide dwelling units for sale to Owners.

ROAD OR STREET shall mean any public road or street or any private paved vehicular way constructed within or upon any portion of the common areas, including any apron or other paved access from such public road or street or private vehicular way to sites within the Community Area.

SECOND REPLACEMENT DEVELOPMENT AGREEMENT shall mean and be that certain unrecorded Agreement dated June 5, 1987 by and between the Trustees under the Will and of the Estate of James Campbell, Deceased as the "Estate", and Thomas H. Gentry as the "Developer", as the same may be amended or succeeded, including provisions which survive any termination of the Second Replacement Development Agreement.

SPECIAL ASSESSMENT shall mean any assessment levied pursuant to Section 6.03.

SUBDEVELOPER shall mean a person or entity as described in Section 4.05, "Subdeveloper", which has obtained from the Declarant the right to develop and/or sell 50 or more units in the Community Area and who has been exempted from the provisions of Article IV.

SUBDIVIDE shall mean the legal division of any parcel of land into two or more parcels of land in accordance with all applicable laws, statutes, ordinances, rules and regulations of government authorities having jurisdiction over the matter.

SUBDIVISION MAP shall mean a map showing a legal subdivision which is recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

UNIT shall mean a complete and independent dwelling unit, whether standing alone or attached to another dwelling unit or part of a building containing multiple dwelling units, but only from and after such time as construction of the unit has been substantially completed and the unit is lawfully fit for occupancy; provided, however, that a dwelling unit created as part of a condominium shall be deemed a "Unit" for the purposes of this Declaration only from and after the time that the Declaration of Condominium Property Regime has been recorded and the dwelling unit has been completed and is lawfully fit for occupancy.

VISIBLE FROM NEIGHBORING PROPERTY shall mean with respect to any object located or activity conducted upon an Owner's property that such object or activity is visible from any adjoining property (except adjoining property owned by the same Owner) from a point six feet or less above ground level. For the purposes of this definition, "adjoining property" shall include common areas, roads and streets, and "ground level" shall mean the ground elevation of the adjoining property or the highest ground elevation of the property upon which the object or activity is located or undertaken, whichever elevation is lower.

ARTICLE II

PROPERTY SUBJECT TO COMMUNITY AREA RESTRICTIONS

Section 2.01. EWA by Gentry: Property Initially Subject to Restrictions. The property initially subject to this Declaration shall be all of the real 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 provisions of this Declaration. Said property, together with such other real property may be added to the Community Area from time to time as provided in Section 2.02, shall be and is hereby referred to as the "Community Area". Exhibit "B" attached hereto is a partial Master Plan for EWA by Gentry developed by the Declarant, with the approval of the Campbell Estate. Said Master Plan shows the initial Community Area and some of the proposed uses of the land within the overall project. Exhibit "B" also shows some of the proposed locations of common areas made or to be made a part of the Community Area, which common areas are generally intended to serve the purposes of providing drainage and flowage areas, buffer zones, pedestrian and non-motorized vehicular routes, rest areas and landscaped open spaces. Development of the Community Area shall be in accordance with the Master Plan provided, however, that anything contained in this Declaration to the contrary notwithstanding, the Declarant may amend and/or supplement the Master Plan in its sole discretion, subject only to the approval and consent of the Campbell Estate.

Section 2.02. Addition of Property Subject to Restrictions. Real property may be added by the Declarant to the real property subject to this Declaration, thereby constituting the same as part of the Community Area. The Declarant may make such additions without the consent of the Owners, provided that the additions are made within twelve (12) years of the date of this Declaration. Exhibit "B" attached hereto shows certain land which may be added to the Community Area but shall neither bind nor limit the Declarant as to such real property which must or may be added.

Section 2.03. Requirements for Adding Property. The addition of any property as provided in Section 2.02 above shall be effective only upon satisfaction of the following requirements:

- (a) Declarant or a Controlled Entity of Declarant is the owner of the real property to be added;
- (b) Declarant shall record one or more documents, which, among other things:
 - (1) describes the real property which is to be added and made subject to this Declaration;
 - (2) sets forth or refers to such other and further limitations, restrictions, covenants and conditions which are to be applicable to such property;
 - (3) declares that such property is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these Community Area Restrictions; and
- (c) There shall have been filed a subdivision map showing the property being added to the Community Area as legally distinct parcels of land.

Section 2.04. Other Restrictions Affecting Added Property. Any provision in this Declaration to the contrary notwithstanding, the document or documents recorded as provided in Section 2.03 above, may contain such other and further limitations, restrictions, covenants and conditions which Declarant deems necessary or desirable, subject only to the written approval and consent of the Campbell Estate. Such other and further provisions may include but shall not be limited to:

- (a) The designation of land classifications not provided for in Section 3.01 hereof and such limitations, restrictions, covenants and conditions with respect to the development and use of property in such land classifications as Declarant may deem appropriate;
- (b) With respect to the land classifications provided for in Section 3.01 hereof, such additional or different limitation restrictions, covenants and conditions as Declarant may deem appropriate, provided that all such new or additional limitations, restrictions, covenants and conditions shall be exclusively applicable to the property added to the Community Area in connection with which the new or additional limitations, restrictions, covenants and conditions are imposed;
- (c) With respect to land specifically added as Private Recreational Areas, such covenants and conditions which, among other things, establish a fair and equitable basis for levying Maintenance Assessments on said land pursuant to Section 6.02 and for determining the voting rights allocable to the Owners of such land under Section 5.03.

Section 2.05. Property Subject to Community Area Restrictions Limited. No property, except for that property described in said Exhibit "A" and except for property specifically added to the Community Area pursuant to this Article II, shall be deemed subject to the provisions of this Declaration, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed and/or recorded by Declarant. 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 provisions of this Declaration any property it may now own or hereafter acquire, other than the property described in said Exhibit "A" or in any such amendment.

Section 2.06. Withdrawal of Property. Real property may be withdrawn by the Declarant from the real property included within the Community Area thereby releasing such real property from all covenants, conditions, limitations and restrictions contained in this Declaration. The Declarant may make such withdrawals without the consent of the Owners provided that (a) the Declarant or a Controlled Entity of Declarant is the sole owner of the property to be withdrawn, (b) that such property has direct access to a public roadway, and (c) such withdrawal has been approved in writing by the Campbell Estate. A withdrawal of real property from the Community Area shall be effective upon the execution and recordation of a document which describes the property withdrawn and declares that such property is released from the provisions of this Declaration.

ARTICLE III

GENERAL CONDITIONS, LIMITATIONS AND RESTRICTIONS AS TO USE

Section 3.01. Land Classifications. Except for lots or sites upon which there are situated facilities of such organizations as are described in Section 3.04, all land within the Community Area shall be classified into one of the following classifications: (a) residential area; (b) commercial area; (c) common area; or (d) Private Recreational Area. The classification of land as aforesaid shall be established

and may be changed from time to time by the Declarant and shall be indicated and/or shown on documents and/or maps on file in the Office of the Association.

Section 3.02. Residential Area. Specific Uses and Restrictions. Each lot or unit in a residential area and the improvement and use thereof shall be subject to the following specific conditions, limitations and restrictions:

- (a) The rights of the Association or its duly authorized agents as provided for in Article V;
- (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 by the Declarant, a Controlled Entity of Declarant or a Subdeveloper to an Owner, shall be made or done except upon strict compliance with the provisions of Section 4.02;
- (c) Unless otherwise permitted by the Association, each unit shall be used exclusively for residential purposes; provided, however, that nothing in this subsection (c) shall be deemed to prevent:
 - (1) any artist, artisan or craftsman from pursuing his calling in or upon a unit, if such artist, artisan or craftsman also uses the unit for residential purposes, is self-employed, has the necessary licenses or permits, if any, to pursue his calling, has no employees working in or about the unit and does not advertise or offer any product or work of art for sale to the public upon or from such unit; or
 - (2) the leasing or renting of any unit from time to time by the Owner for residential purposes only and not for transient accommodation purposes;
- (d) Each lot and any and all improvements, landscaping, yard decoration and plant growth located thereon shall be kept and maintained by the Owner thereof in good repair, clean, neat and orderly condition and in such manner as not to create any fire, safety or health hazard in the Community Area or any part thereof, all at the Owner's sole cost and expense;
- (e) The Owner of any lot, unit or site within the Community Area, including the Association, shall maintain in good repair any fence or wall along any street boundary of his or its lot, unit or site and will also maintain any fence or wall on his or its lot, unit or site within two feet of any common boundary between his or its lot, unit or site and an adjacent lot, unit or site, unless both neighbors agree to demolish and remove the same; provided that each neighbor with a fence or wall along such a common boundary shall be liable for half the cost of maintenance or repair of such fence or wall, provided, however, that an Owner whose property abuts the wall constructed or to be constructed on the common areas along Fort Weaver Road shall be responsible only for the maintenance of the interior surface of said wall facing such Owner's property, as well as the repair of any damage to said wall occasioned by such Owner and provided further that once constructed, such wall shall not be removed or replaced without the approval and consent of the Campbell Estate.
- (f) The Owner of any lot, unit or site within the Community Area shall landscape and maintain in a neat and attractive condition any planting strip or portion thereof lying between the sidewalk and the street in front of or bordering such Owner's lot, unit or site, provided that in the case of planting strips in front of or bordering a condominium project, the condominium association shall have such landscape and maintenance responsibility;
- (g) 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;
- (h) No animals shall be kept and maintained on any lot other than a reasonable number of suitable house pets kept for the Owner's personal pleasure and not for sale or other commercial purposes, and no animal shall be kept and maintained on any lot which is a nuisance to neighbors;
- (i) 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 two (2) square feet or less;
 - (3) during the time of construction of any residence or other improvement, job identification signs having a maximum face area of six (6) 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 (3) square feet, such sign to refer only to the lot on which it is situated;
- (j) 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 six months, which are used exclusively in connection with and during the construction of any work or improvement permitted under Section 4.02;
- (k) No accessory structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the residence thereon; 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, which are used exclusively in connection with and during the construction of the main structure of the residence;
- (l) No trailer, truck, automobile, boat or other vehicle shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from neighboring property, and vehicles not in operating condition shall not be kept or maintained upon any road or street or upon any lot so as to be visible from neighboring property; provided that nothing in this paragraph shall prevent an Owner from performing maintenance work and minor repairs on his own trailer, truck, automobile, boat or other vehicle in his garage or carport;
- (m) No garbage, trash or other refuse matter, including waste plant materials, shall be kept on any lot, except in closed receptacles or except suitably bundled, tied and otherwise secured to permit disposal thereof by refuse collectors;

- (n) No open storage of furniture, fixtures, appliances and other goods and chattels shall be permitted on any lot so as to be visible from neighboring property, and no washing or drying machines, outside clothes line or other outside clothes drying or airing facilities shall be maintained on any lot unless the same are screened from view and are not visible from neighboring property;
- (o) No open burning or any other exterior fires shall be permitted on any lot, except barbecue fires, and no Owner shall permit any condition on his lot which creates a fire hazard;
- (p) Vehicular access shall not be permitted from any lot to a street over a boundary that is indicated on the subdivision map covering such lot to have restricted access or 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 of any such lot may not cut any curb along any street adjacent to such boundary or common area;
- (q) No motor vehicles shall be parked on the sidewalk area of any road or street or on any portion of a lot visible from neighboring property, except in a garage or carport or on a paved driveway area; and no motor vehicle may be kept on any lot unless it is in operating condition, is currently registered with the Department of Motor Vehicles of the City and County of Honolulu and bears a current safety inspection sticker, or unless the motor vehicle is at all times kept in an area not visible from neighboring property;
- (r) An Owner of a lot or unit shall not undertake or permit thereon or therein the repair and/or maintenance of a motor vehicle, except a motor vehicle owned by such Owner or a member of his household; and unless undertaken in an area which is not visible from neighboring property, no such repair and/or maintenance shall be undertaken unless it is pursued continuously to completion and is completed within six (6) hours;
- (s) The Owner of a lot or unit shall not violate or permit the violation on his lot or unit of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matters relating to the use and development of his lot or unit;
- (t) A garage or carport shall be used for no other purpose other than the parking of vehicles and boats, unless the same is enclosed by a partition, wall, door or screen and is kept closed except for entry and exit; provided specifically that a garage or carport which is not so enclosed or is enclosed but not kept closed shall not be used for laundry or for storage purposes;
- (u) No truck of more than one ton capacity or more shall be kept, placed or maintained upon any lot so as to be visible from any street, unless written permission is obtained from the Board of Directors of the Association or unless such truck is being used exclusively in connection with and during the construction of an improvement permitted under Section 4.02;
- (v) The Owner of a lot or unit shall not conduct, hold or permit to be held on or about his lot or unit more than one (1) "garage sale" every six (6) months, any such "garage sale" to last no more than two (2) consecutive days.
- (w) No activity shall be undertaken upon any lot or in or about any unit which would unreasonably disrupt or impair the privacy and quiet enjoyment of any other lot or unit by the Owner thereof.
- (x) The Owner of a lot or unit (including individually and collectively, the Owners of units in a condominium) shall permit access at reasonable times to any provider of cable television service with whom the Declarant or the Association has contracted to provide such service, for the purpose of enabling the provider to maintain and repair its lines, equipment and facilities located upon the Owner's lot or unit (or site, in the case of a condominium).
- (y) The specific conditions, limitations and restrictions set forth in this Section 3.02 and any duties, obligations and liabilities arising therefrom or on account of violations thereof shall apply to and be borne by, jointly and severally, the Owner or Owners of a lot and the actual occupants or users thereof, including family members, tenants, guests and invitees.

Section 3.03. Common Area. Specific Uses and Restrictions. The use and enjoyment of the common areas shall be reserved equally to all Owners of lots and units within the Community Area, except as herein specifically provided, and each Owner, along with each and every other Owner, shall have a non-exclusive right and easement of enjoyment in and to the common areas which shall be appurtenant and shall pass with the title to every lot or unit within the Community Area, subject, however, to the following conditions, limitations and restrictions:

- (a) The rights of the Association and its duly authorized agents with respect to the common areas as provided for in Article V;
- (b) Such easements and rights-of-way as are reserved from the common areas at the time of conveyance thereof to the Association and such 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 subsection 5.05(c);
- (c) No improvement, excavation, fill 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 Section 4.03;
- (d) Except to the extent otherwise permitted in this Section and Sections 5.04, 5.05 and 7.02, there shall be no use of a common area which may injure or scar the common areas, increase the cost of maintenance thereof, cause embarrassment, disturbance or annoyance to Owners or disrupt the quiet enjoyment and use by Owners of their lots and units and/or the common areas. Without limitation to the generality of the foregoing:
 - (1) there shall be no camping on any common area except as permitted by the Board of Directors of the Association by written permission;
 - (2) there shall be no fires started or maintained on any common area except fires started and controlled by the Association in connection with the maintenance and preservation of property within the Community Area, and except for cooking fires in proper enclosures at proper sites specifically developed and designated for such purposes by the Association; and

- (3) no animals shall be permitted on any common area except when accompanied by and under the control of the Owners to whom they belong;
- (e) The rights of Owners to use and enjoy the common areas as specified herein shall be deemed to extend to the members of the families of all Owners and to their tenants, invitees and guests.
- (f) Rights of access at reasonable times in favor of any provider of cable television service with whom the Declarant or the Association has contracted to provide such service, for the purpose of enabling the provider to maintain and repair its lines, equipment and facilities located upon the common areas.

Section 3.04. Property Owned by Government Instrumentalities and Public Utilities and Private Eleemosynary, Religious, Educational, Community and Civic Organizations.

- (a) The covenants, conditions, limitations and restrictions on the use, occupancy and improvement of property set forth in this Article III and in Article IV shall not apply to any lot or other area while and so long as the same is owned by or leased to the State of Hawaii, the City and County of Honolulu, or any government or quasi-government agency or instrumentality or any public utility and is used for the purpose of providing residents of the Community Area and neighboring lands with publicly funded government services (excluding the provision of housing) or regulated utility services, but only to the extent that such covenants, conditions, limitations and restrictions prevent the reasonable use of such lot or area for said purposes. All conditions, limitations and restrictions not so preventing shall continue to apply, including without limitation, the requirements of Design Committee approval for improvements proposed to be made. On cessation of such use, the covenants, conditions, limitations and restrictions of this Article III and Article IV shall be applicable in their entirety;
- (b) The Declarant and the Association shall each have the right, and nothing in this Declaration shall be deemed to limit the right, to release and to file or record an appropriate document releasing any lot or other area owned by it from any covenants, conditions, limitations or restrictions contained in this Declaration, if, in its sole discretion, such release is necessary or advisable to have such lot or area accepted and acquired by the State of Hawaii, the City and County of Honolulu, or any government or quasi-government agency or instrumentality or any public utility for the purpose of providing residents of the Community Area and neighboring lands with publicly funded government services (excluding the provision of housing) or regulated utility services, provided that any such release shall be expressly limited to the period of time that the lot or area so released is used for such purpose and provided further that any such release shall be subject to the prior written consent of the Campbell Estate, which consent shall not be unreasonably withheld.
- (c) Neither the State of Hawaii nor the City and County of Honolulu, nor any governmental or quasi-governmental agency or instrumentality, nor any public utility shall have the right to vote as a member of the Association or be liable for any assessments under the provisions of Article VI on account of its ownership of any property in the Community Area except on account of its ownership of a unit;
- (d) Private eleemosynary, religious, educational, community and civic institutions and organizations shall not be exempt or be exempted from any of the covenants, conditions, limitations and restrictions contained in this Declaration. Such institutions and organizations shall be entitled to vote as members of the Association and shall be liable for assessments under the provisions of Article VI.

3.05. Private Recreational Area. The Declarant may set aside certain areas within the Community Area for the development and operation of private recreational facilities, the use of which requires the payment of user fees and/or membership dues or fees. Any such Private Recreational Area may be owned, operated and managed by a private party or by the Association.

ARTICLE IV IMPROVEMENT OF PROPERTY

Section 4.01. Design Committee: Establishment, Organization, Rights, Powers and Duties.

- (a) There shall be a Design Committee, the function of which shall be to oversee and exercise control over the development and improvement of property in the Community Area, all for the purpose of maintaining the standards and plan of development in EWA by Gentry;
- (b) The Design Committee shall consist of three (3) members, at least one of whom shall be a registered professional architect or engineer designated the "Professional Member". Except for the Professional Member and the initial members of the Design Committee hereinafter designated, and except for any member who may be nominated by the Declarant and duly appointed as hereinafter set forth, all members of the Design Committee shall also be Owners. The initial members of the Design Committee shall be: JOHN SHAW, designated the Professional Member, and NORMAN DYER and TOSHIMASA HOSODA, and each shall remain a member until such time as he resigns or he has been removed and his successor appointed as set forth in paragraph (c) below. Any member appointed to the Design Committee may resign at any time by giving written notice to the Board of Directors of the Association. The Professional Member may be retained by the Association on a fee basis and may be compensated for services rendered in accordance with such contractual arrangements as may be established between the Association and the Professional Member. Unless otherwise authorized by the Association, the non-professional members of the Design Committee shall not receive compensation for services rendered; provided, however, that all members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties.
- (c) The right to appoint and remove members of the Design Committee shall be reserved to and vested in the Board as follows:
 - (1) at any meeting of the Board, the Board may appoint replacements for the initial members of the Design Committee;
 - (2) the initial replacements shall be appointed to serve as members of the Design Committee for a period of two (2) years;
 - (3) as the respective terms of members expire, or in the event a member resigns, the Board shall appoint replacements to serve as members for a period of two (2) years.

- (d) It shall be the duty of the Design Committee to consider and act upon all proposals or plans for the development and improvement of property in the Community Area as are submitted to it pursuant to this Declaration and to perform such other duties as may be delegated to it from time to time under this Declaration. In performing its duties, the Design Committee may, but shall not be required, to conduct a hearing or to consult personally with the persons or parties who submit proposals or plans for Design Committee approval;
- (e) The Design Committee shall meet from time to time as is necessary to perform its duties hereunder. The vote or written consent of any two members of the Design Committee shall constitute authority for the Design Committee to act, unless the unanimous vote or consent of its members is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all proposals and plans submitted to it and the specific action taken with respect to each and a record of all other actions taken by the Design Committee.
- (f) By unanimous vote of its members, the Design Committee may adopt, amend and repeal rules and regulations to be known as the "Design Committee Rules". Within the limits established in this Declaration, the Design Committee may establish by Design Committee Rule:
 - (1) specific procedures governing the manner and method by which applications, proposals, plans and specifications for the development and improvement of property shall be submitted, received and processed;
 - (2) a schedule of standardized fees to be charged upon the submission of such applications, proposals, plans and specifications for the review and processing of same;
 - (3) interpretive guidelines and specific interpretations of all limitations and restrictions contained in this Declaration pertaining to the design and construction of improvements, alterations, replacements and repairs, including but not limited to, the materials to be used therein;
 - (4) interpretive guidelines and specific interpretations of all limitations and restrictions contained in this Declaration pertaining to excavation, grading and fill, landscaping, alteration of the natural or existing drainage of surface water, and installation of sewage, water and facilities; and
 - (5) to the extent practical, standards which shall be required in the construction of any residence, apartment or condominium building.

A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by the Secretary or an Assistant Secretary of the Association, shall be filed in and shall be available for inspection at the office of the Association, and duplicate copies thereof shall be delivered to each Owner upon his acquisition of a lot or unit in the Community Area. A copy of each new rule and each amendment or repeal of an existing rule shall likewise be given to each Owner. Design Committee Rules and each amendment or repeal of an existing rule shall be effective upon the filing thereof in the office of the Association, and when adopted and so filed, Design Committee Rules shall have the same force and effect as if they were set forth and were a part of this Declaration. The failure to deliver to any Owner a copy of a rule or an amendment or repeal thereof shall not render such rule, amendment or repeal invalid.

- (g) The approval of the Design Committee of any plans and specifications for any work done or proposed or submitted in connection with any matter which requires the approval of the Design Committee, shall not constitute a waiver by the Design Committee of its right to withhold its approval of any similar plans and specifications or any other matter subsequently submitted for approval, whether or not by the same person or party;
- (h) Upon the request of any Owner and payment to the Association of a reasonable fee, the Design Committee shall issue to the Owner a statement executed by at least two of its members certifying that as of a certain date:
 - (1) all improvements and/or work made or done on the lot of the Owner comply with the provisions of this Declaration, including any Design Committee Rules; or
 - (2) such improvements and/or work do not comply with the provisions of this Declaration
 Before issuing any such certification, the Design Committee may require the Owner requesting same to furnish the Design Committee with a statement from a registered professional architect or engineer certifying that the improvements and/or work done are in accord with the plans and specifications therefor which were previously approved by the Design Committee. The Design Committee shall issue such statement within thirty (30) days after demand and payment therefor has been made by the Owner and the Design Committee has received any required architect's or engineer's certification. The statement shall be in form suitable for recordation in the Bureau of Conveyances or filing in the Office of the Assistant Registrar of the Land Court. Any purchaser or lessee from the Owner or mortgagee or holder of any other encumbrance on the property covered by such statement shall be entitled to rely on the statement with respect to all matters contained therein, and such matters shall be deemed conclusive as between the Association, the Declarant, the Design Committee, all Owners and the holder of any encumbrance;
- (i) Neither the Design Committee nor any member thereof shall be liable to the Association, to any Owner or to any other person for any loss, damage or prejudice suffered or alleged to be suffered as a result of any Design Committee action or inaction or the issuance of any statement pursuant to subsection (h) above, provided that the members of the Design Committee have acted in good faith upon knowledge actually possessed by them;
- (j) If for any reason a quorum of the Design Committee cannot be assembled to act on a particular matter or matters for a period of more than twenty (20) days from the date of the submission of such matter or matters, the President, or in his stead, the Vice President, may serve temporarily and perform the functions and duties of a Design Committee member for as long as the regular members of the Design Committee are unable to meet. In such event, the President, or in his stead, the Vice President, of the Association shall indicate with respect to any action taken the reasons for his acting as a member of the Design Committee. In the event that the Professional Member of the Design

Committee is not available to meet, the Design Committee may employ an architect or engineer to render technical advice and may offer to such architect or engineer reasonable compensation as approved by the Board of Directors of the Association;

- (k) Any provision in this Section 4.01 notwithstanding, the rights, powers and duties of the Design Committee shall not apply or have any force or effect so as to limit or affect in any way the right of the Declarant or a Subdeveloper to develop and make improvements or to undertake new construction on undeveloped and unimproved real property owned by the Declarant or such Subdeveloper.

Section 4.02 Residential Area: Conditions, Limitations and Restrictions on Improvement. Any improvement, alteration, repair or other work undertaken upon any lot or unit in a residential area, which is or may be visible from neighboring property shall be subject to the conditions, limitations and restrictions set forth below:

- (a) No construction or reconstruction of any improvement, alteration, repair or refinishing of any part of the exterior of an existing improvement or any other exterior work which has a cost or replacement value exceeding \$1,000.00 shall be commenced or continued upon any lot unless the Owner thereof first obtains the approval of the Design Committee as follows:
 - (1) the Owner shall submit to the Design Committee preliminary plans for the proposed work prepared by an architect, unless otherwise permitted by the Design Committee, which plans shall show in detail the nature and dimensions of the proposed improvement or work;
 - (2) within forty-five (45) days after submission of the preliminary plans, the Design Committee shall review the plans and return them to the Owner indicating its approval or disapproval. If disapproval is indicated, the general nature of the Design Committee's objections shall also be stated. The Design Committee's failure to disapprove within said forty-five-day period shall be deemed approval of the preliminary plans;
 - (3) after review of the preliminary plans has been completed, the Owner shall submit in duplicate to the Design Committee the final plans and specifications for the proposed improvement or work, which shall include where appropriate a plot plan showing easements, set-back lines and contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the location of all proposed utility installations, and any landscape plans, including all trees the Owner intends to plant or remove. The plans and specifications shall also indicate all exterior materials, finishes and colors to be used. Along with the plans and specifications, the Owner shall submit his proposed construction or work schedule and shall pay a reasonable fee for the Design Committee's inspection and review;
 - (4) Within thirty (30) days after the submission of the final plans and specifications, the Design Committee shall either approve or disapprove the same in writing. Any disapproval shall also set forth the reasons for disapproval. If the Design Committee does not disapprove within the thirty-day period, the final plans and specifications shall be deemed approved as submitted. The Design Committee may not disapprove any aspect of the final plans and specifications which was apparent in the preliminary plans and previously approved by the Design Committee;
 - (5) If the final plans and specifications are disapproved by the Design Committee, the Owner may correct or modify the same to account for the reasons given for disapproval by the Design Committee and resubmit the final plans and specifications within thirty (30) days after receiving the Design Committee's disapproval. Within twenty (20) days after resubmission of the corrected or modified final plans and specifications, the Design Committee shall either approve or disapprove the same in writing in the same manner set forth in paragraph (4) above. If the Design Committee does not disapprove within said twenty-day period, the corrected or modified plans shall be deemed approved as submitted.
- (b) Approval of plans and specifications by the Design Committee as aforesaid shall be effective for a period of one (1) year and may be revoked if the work pursuant to such plans and specifications has not commenced within said one-year period or has not proceeded in reasonable accordance with the proposed work schedule submitted by the Owner with the plans and specifications. The Design Committee shall give written notice to the Owner of revocation of approval, stating the reasons therefor, and revocation of approval shall be effective upon the giving of such notice. If approval is revoked for untimely commencement of the work, the Owner may not commence work pursuant to the previously-approved plans and specifications without first reobtaining Design Committee approval. In such case, the Design Committee shall treat any resubmission of plans and specifications, whether or not they are identical to the plans and specifications previously approved, as a new submission and shall not be bound by any prior decision made with respect to same. The Design Committee may also require the payment of another fee for review and inspection. If approval is revoked for the reason that work has not proceeded in a timely manner, the Owner may not proceed with any further work pursuant to the previously approved plans and specifications without first reobtaining the approval of the Design Committee as aforesaid. If the work is abandoned at any time prior to completion, the Association may take any and all reasonable steps to have the work completed or the property restored to its pre-existing condition and may assess the Owner for all costs and expenses incurred in connection therewith;
- (c) Upon the completion of any construction, reconstruction, refinishing, alteration, repair or other work for which approved plans and specifications are required pursuant to this section, the Owner shall give written notice thereof to the Design Committee. Within thirty (30) days after such notice is given, the Design Committee shall inspect the improvements or work in order to determine whether or not there has been substantial compliance with the approved plans and specifications or in lieu of such inspection, require the Owner to furnish a statement of a registered professional architect or engineer certifying that the improvements or work done are in accordance with the approved plans and specifications. If the Design Committee finds that there has not been substantial compliance with the approved plans and specifications or the Owner fails to furnish any required architect's or engineer's certification, the Design Committee shall notify the Owner of such noncompliance or failure and require the Owner to remedy the same within sixty (60) days after such notice

is given. If the Owner fails to remedy such noncompliance within said sixty-day period, the Association may take any and all reasonable steps to remedy the noncompliance or to restore the property to its pre-existing condition and may assess the Owner for all costs and expenses incurred in connection therewith. If the Design Committee does not notify the Owner of any noncompliance or require the Owner to furnish an architect's or engineer's certification within thirty (30) days after receipt of notice of completion from the Owner, the improvements or work shall be deemed to have been completed in accordance with the approved plans and specifications;

- (d) Regardless of the cost or replacement value of same, the following specific conditions, limitations and restrictions shall be applicable to any improvement, alteration or repair undertaken upon any lot in a residential area:
- (1) no reflective finishes shall be used upon exterior surfaces (other than glass and the surfaces of hardware fixtures) if such exterior surfaces are visible from neighboring property;
 - (2) all roofs, other than flat roofs shall be covered with composition shingles, cedar shingles, concrete shingles, or cedar shakes in such colors as shall have first been approved by the Design Committee; flat roofs may be finished with built-up tar and gravel in colors of dark brown to red-brown or gray to blue-gray only;
 - (3) no metal, vinyl or plastic roofing material or wall siding visible from neighboring property shall be permitted unless the same is maintained in a non-reflective condition;
 - (4) no gas tanks will be permitted which are visible from neighboring property;
 - (5) no permanent exterior electric lighting of any sort shall be installed or maintained unless the direct source of light is shaded so as not to be visible from neighboring property;
 - (6) all outside telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground;
 - (7) unless the prior approval of the Design Committee is obtained, no trees shall be planted within ten (10) feet of a property line and no trees planted by the Declarant or a Subdeveloper within ten (10) feet of a property line shall be removed or cut down;
 - (8) no second-hand or used lumber or other material shall be used in any construction without the prior approval of the Design Committee;
 - (9) any fence or wall located within twenty (20) feet of a property line facing a street shall be of lava rock, split-face block, stucco, brick or used brick with raked joints or siding which matches the exterior colors and materials of the dwelling unit or shall be of such other design and materials approved by the Design Committee;
 - (10) no flagpoles shall be erected so as to be visible from neighboring property or the street unless the size and location thereof has been approved by the Design Committee;
 - (11) no television or radio antennas shall be erected on the roof of any dwelling unit or outside of any dwelling unit so as to be visible from neighboring property or the streets;
 - (12) rain gutters shall be of a matching type for the entire dwelling unit served and, except for copper gutters, shall be painted in non-reflective colors which match the trim or siding colors of the dwelling unit;
 - (13) if visible from neighboring property or the street, no accessory structures, such as fences, courtyard walls, covered lanais, playhouses, sheds, storage bins, dog kennels or other animal enclosures, shall be permitted unless painted in colors complimentary to the main dwelling unit, and no such accessory structure which is visible from neighboring property or the street shall be constructed or made of plastic, wire, chicken wire, chain link fencing material or unpainted reflective materials;
 - (14) no aluminum, plastic or canvas awnings shall be erected so as to be visible from the street;
 - (15) no part of the exterior of any dwelling unit visible from neighboring property or streets shall be unpainted or refinished except in accordance with the original color or finish or except in colors or finishes approved by the Design Committee;
 - (16) the back side of any drapes, blinds or other window shading devices which is visible from neighboring property through the window shall not be of bright or conspicuous color but rather white, off white, beige or other inconspicuous shade;
 - (17) no window tint or reflective material shall be applied to any window which is visible from neighboring property unless it has been previously approved by the Design Committee.
- (e) In addition to the specific conditions, limitations and restrictions set forth in subsection (d) above, any improvement, alteration or repair undertaken upon any lot in a residential area shall be in conformity with the following general conditions, limitations and restrictions:
- (1) the improvement, alteration or repair shall be compatible and in harmony with existing structures and other improvements in the area with respect to quality and type of materials, workmanship, external design and location of the improvement, alteration or repair on the lot, taking into account topography and ground elevation;
 - (2) the improvement, alteration or repair shall conform to the general plan of the entire development of EWA by Gentry;
 - (3) the improvement, alteration or repair shall not because of its design unreasonably interfere with the light, air or view of adjoining lots;
 - (4) the improvement, alteration or repair shall not be such as would tend to cause, promote or threaten unreasonable interference with the privacy and quiet enjoyment of other lots or units in the Community Area.
- (f) Except as is reasonably necessary for or incident to the improvement, alteration, repair or other work undertaken upon any lot in a residential area, plans for which the Owner has obtained the approval of the Design Committee:
- (1) there shall be no grading, excavation or fill undertaken upon any such lot;
 - (2) there shall be no change in the natural or existing drainage for surface water upon any such lot; and
 - (3) no power, telephone or other utility lines, wires or conduits which would be visible from neighboring property shall be installed upon any such lot unless Design Committee approval is first obtained in the manner provided in subsection 4.02(a) above.

- (g) In the event of any violation of the provisions of this Section 4.02, the Association may take any and all reasonable steps to restore the lot or unit in or upon which such violation has occurred to its existing condition prior to the violation or to otherwise correct the violation or eliminate or mitigate the effects of the violation, and the Association may assess the Owner of such lot or unit for all costs and expenses incurred in connection therewith.

Section 4.03. Common Areas: Specific Conditions, Limitations and Restrictions on Improvement. No improvement, alteration, repair or other work that in any way alters a common area from its natural or existing state on the date when such common area was acquired by the Association, except for routine maintenance and repair, shall be made or done except in compliance with the following conditions, limitations and restrictions:

- (a) Except in connection with the installation of a subsurface utility system pursuant to subsection (d) below, no person other than the Association or its duly authorized agents, shall undertake any grading, excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, grass or other vegetation from or plant any tree, shrub or other vegetation upon any common area;
- (b) Except as provided in subsection (c) below, the Association shall not construct or reconstruct any improvement or refinish or alter the exterior of any part of any existing improvement located or to be located upon any common area, and the Association shall not undertake any grading, excavation or fill, or change the natural or existing drainage or surface of waters, or remove any trees, shrubs, grass or other vegetation upon any common area without first obtaining the approval of the Design Committee. The Association shall submit plans and specifications for any such work, which plans and specifications shall be in such form and contain 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 subsection only if the following conditions have been satisfied:
 - (1) in the case of plans to construct any new improvement or to alter the exterior of any existing improvement, the Design Committee finds that such improvement or alteration complies with the conditions, limitations and restrictions set forth in subsections 4.02(d) and 4.02(e);
 - (2) the Design Committee finds that the proposed work will not, because of its design, materially prejudice any Owner in the use and quiet enjoyment of his lot or unit or tend to reduce the privacy of neighboring lots or units.

Such approval shall be in writing. A disapproval of plans and specifications shall also be in writing and shall set forth with particularity the reasons for such disapproval. If the Design Committee does not act on plans and specifications within forty-five (45) days after the submission thereof, such plans and specifications shall be deemed approved as submitted. In the event of disapproval, any member of the Board of Directors may submit to a meeting of the Association duly called for the purpose the question of whether to abandon the proposed improvement, alteration or work or to have the same redesigned and resubmitted to the Design Committee for approval.

- (c) The Association may at any time:
 - (1) reconstruct, replace, repair 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 design, finish and standard of construction of such improvement when such common area was conveyed to the Association;
 - (2) construct, reconstruct, replace, repair or refinish any road improvement upon any portion of the common area designated on a subdivision map as a road or street;
 - (3) add or replace any 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 EWA by Gentry, for the identification of roads, for the regulation of traffic, including parking, for the regulation and use of the common areas and for the health, welfare and safety of Owners and the public, provided that the design of any such signs or markers shall first be approved by the Design Committee. The Association shall from time to time at the request of the Declarant conform the foregoing common area signs and markers to any sign criteria developed by the Campbell Estate for the Kapolei area; provided, however, that the Association shall not be required to replace any existing signs or markers in order to meet the Campbell Estate's criteria prior to their normally scheduled replacement unless the cost of such early replacement is borne by the Campbell Estate.
- (d) Any Owner may install and maintain within a common area a portion of any subsurface utility system which serves such Owner's lot, provided that the Owner first obtains approval of the Design Committee in the manner set forth in subsection (b) above and an easement therefor from the Association.

Section 4.04. Presumption of Compliance. All of the following described improvements, alterations, repairs and other work shall for all purposes of this Declaration be conclusively presumed to have been done and to be in compliance with the conditions, limitations and restrictions of this Article IV and any other provision of this Declaration relating to conditions, limitations or restrictions on the improvement of property:

- (a) those improvements existing or maintained within or upon any property within the Community Area at the time such property became a part of the Community Area;
- (b) those improvements existing or maintained within or upon any property within the Community Area at the time such property was first conveyed by the Declarant to an Owner or to the Association, as the case may be;
- (c) all original improvements caused to be constructed by the Declarant, a Controlled Entity of Declarant or a Subdeveloper on previously unimproved property in the Community Area;
- (d) the restoration, repair or refinishing of improvements in strict accordance with the design, materials, finishes and colors of the original improvements caused to be constructed by the Declarant, a Controlled Entity of Declarant or a Subdeveloper.

Section 4.05. Subdeveloper. Anything contained in this Declaration to the contrary notwithstanding, the Declarant may enter into an agreement, arrangement or other transaction with any person or entity pursuant to which the other party may obtain the right to develop and/or sell at least 50 units within the Community Area and may be exempted from compliance with the provisions of this Article IV, provided that the Declarant expressly exempts such other party from compliance with this Article IV, and provided further that any instrument by which such other party acquires the right to develop and/or sell units shall contain an express restriction to be enforced or released only by the Campbell Estate that development of the land involved shall be in compliance with the provisions of Paragraph 6 of the Second Replacement Development Agreement or the equivalent provisions of any successor agreement. For the purposes of this Declaration, any such other party shall be deemed a "Subdeveloper" and shall be registered as such in the records of the Association hereinafter described.

ARTICLE V

EWA BY GENTRY COMMUNITY ASSOCIATION

Section 5.01. Establishment. There shall be a nonprofit corporation known as the "EWA by Gentry Community Association" (herein referred to as the "Association") which shall have and be empowered with the rights and be charged with the duties, obligations and responsibilities set forth in this Declaration and in its Charter and By-Laws.

Section 5.02. Membership.

- (a) Each and every person, corporation, partnership or other legal entity being an "Owner" as hereinafter described shall be a member of the Association;
- (b) For the purposes of determining membership status in the Association, the term "Owner" shall be deemed to include:
 - (1) an owner of any lot or unit within the Community Area, including any government agency or instrumentality that owns a unit;
 - (2) with regard to a condominium unit within the Community Area, an "apartment owner" as that term is defined in the Condominium Law of the State of Hawaii (Hawaii Revised Statutes (1985), Chapter 514A, or the law of the State of Hawaii thereunto succeeding), but only from and after such time as the condominium unit has been completed and is lawfully fit for occupancy;
 - (3) an owner of any parcel of land within a commercial area;
 - (4) an owner of any parcel of land within a Private Recreational Area;
 - (5) an owner of any parcel of land within the Community Area which is a private eleemosynary, religious, educational, community or civic institution or organization; and
 - (6) the Declarant, so long as the Declarant is the owner of any unit or lot or land, whether or not subdivided into lots, within the Community Area.

Except for the Declarant, an owner of residential area land not subdivided into lots shall not be deemed an "Owner" for the purposes of determining membership in the Association until the land or a portion thereof has been subdivided into lots, or if the land is being developed as a condominium project, until at least one condominium unit thereon has been substantially completed and is lawfully fit for occupancy. As such residential area land is subdivided into lots or condominium units are completed thereon, the owner thereof shall be deemed an "Owner" for the purposes of determining membership in the Association as to each lot created or unit completed.

- (c) No membership shall be terminated or forfeited, and no member shall be expelled, except upon transfer of his interest in the Community Area which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale of such interest therein, the vendor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed or assignment of lease in compliance with said agreement of sale or reversioning in the vendor in the event of termination of said agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner.
- (d) The membership of the Association shall be divided into four (4) classes of membership as follows:
 - (1) Class A members shall include all owners described in paragraph (b)(1) and (b)(2) above, including any Subdeveloper from and after such time as the land with respect to which any such owner is a Subdeveloper has been subdivided into lots, or if the land is being developed as a condominium project, from and after such time as at least one unit thereon has been completed and is lawfully fit for occupancy;
 - (2) the Class B member shall be the Declarant;
 - (3) Class C members shall include all owners described in paragraph (b)(3) and (b)(5) above other than the Declarant; and
 - (4) Class D members shall include all owners described in paragraph (b)(4) above other than the Declarant.
- (e) The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be exclusively as set forth in this Declaration and the Charter and By-Laws of the Association.

Section 5.03. Voting Rights. Members of the Association shall be entitled to vote as follows:

- (a) Each Class A member shall be entitled to one (1) vote for each lot or unit owned, provided that if more than one person or entity owns a particular lot or unit, any one of said persons or entities may exercise the one vote attributable to the ownership of said lot or unit unless a co-Owner objects, in which case the exercise of the one vote by any co-Owner shall require the unanimous written consent of all co-Owners.
- (b) The Class B member (Declarant) shall be entitled to three (3) votes for each lot or unit owned by it and three-quarters of one (0.75) vote for each one thousand (1,000) square feet, rounded to the nearest thousand, of land in the Community

Area owned by it (not including private recreational area land) which has not yet been subdivided into lots; provided, however, that at such time as seventy-five percent (75%) of the total land area in the Community Area, not including land classified as private recreational area land, has been developed and the lots, units or sites developed thereon have been conveyed to individual Owners other than the Declarant or a Subdeveloper, the votes exercisable by the Declarant shall be reduced to one (1) vote for each lot or unit owned by it and one-fourth of one (0.25) vote for each one thousand (1,000) square feet of land owned by it (not including private recreational land) which has not yet been subdivided into lots. The Declarant shall also be entitled to the number of votes allocated to private recreational area land in the Community Area owned by the Declarant which votes were allocated pursuant to Section 2.04 at the time such land was added to the Community Area.

- (c) Each Class C member shall be entitled to one-fourth of one (0.25) vote for each one thousand (1,000) square feet of land owned rounded to the nearest thousand.
- (d) Each Class D member shall be entitled to the number of votes allocated to the land owned by such member which was allocated by the Declarant pursuant to Section 2.04 at the time such land was added to the Community Area.

Section 5.04. Duties and Obligations of the Association. The Association shall accept, undertake and perform each of the following described obligations, duties and responsibilities:

- (a) The Association shall acknowledge and accept as part of the Community Area all property which may be added to the Community Area from time to time pursuant to Section 2.02;
- (b) The Association shall accept title to all common areas and other property conveyed to it from time to time, pursuant to Section 7.02;
- (c) The Association shall provide for the upkeep and maintenance in good order of all common areas and other real property owned by the Association and all improvements thereon of whatsoever kind and nature. In addition, the Association shall provide for the upkeep and maintenance of all fences and walls designated by the Declarant which serve as a barrier between property in the Community Area and public streets and rights of way located within or outside of the Community Area (whether or not presently dedicated as such) or as a barrier between property in the Community Area and adjacent agricultural or vacant land outside the Community Area, irrespective of the location of such fences and walls, in whole or in part, on public property, Association property, the property of private Owners or property adjoining the Community Area; provided, however, that the duty to upkeep and maintain such fences and walls shall not include the duty to upkeep and maintain the interior surface of any such fence or wall which bounds the lots of private Owners or condominiums within the Community Area or to repair damage to such fences or walls occasioned by Owners. Without limitation to the generality of the foregoing, the Association's duty to provide for upkeep and maintenance as aforesaid shall apply to the wall constructed or to be constructed on the common areas along Fort Weaver Road.
- (d) The Association shall accept and undertake to fulfill any delegation, responsibility or liability for the upkeep, repair and maintenance in good order of any property and improvements, including drainage facilities and equipment and landscaping, within or adjoining the Community Area, which obligation, responsibility or liability is imposed by or exists by virtue of law or which is imposed by or exists by virtue of a private agreement entered into by the Declarant or commitment made by the Declarant to a governmental authority that was necessary or incidental to the development of the Community Area, whether or not the Association was or is made a party to such agreement or commitment;
- (e) The Association shall accept and undertake the responsibility and obligation to upkeep, repair and maintain any area within the Community Area (whether or not such area is formally designated a lot) for which such responsibility and obligation has been delegated to the Association by the Declarant provided that, (i) the area is intended to be conveyed to the Association by the Declarant as a common area, (ii) the area is fully and completely developed for its intended use, (iii) the area is available for use by all Owners within the Community Area or is of general benefit to the Community Area and (iv) the Declarant gives the Association thirty (30) days prior written notice that responsibility for upkeep, maintenance and repair is being turned over.
- (f) The Association shall pay all real property taxes and assessments levied upon all or any portion of the common areas owned by it, except for such taxes and assessments upon portions of the common areas which are duly assessed directly to any Owner or Owners;
- (g) The Association shall assess and collect the assessments and maintain the operating funds of the Association in accordance with Article VI;
- (h) The Association shall obtain and maintain in force appropriate policies of insurance which provide, in such form as may from time to time be obtainable at reasonable cost, the following coverage:
 - (1) "all risk" insurance, excluding earthquake and flood, on all above ground structures and improvements which are owned by the Association and located upon or within any common area, the amount of such insurance to be not less than eighty percent (80%) of the aggregate full insurable value, meaning the actual replacement value (exclusive of the cost of excavation, foundations and footings) of such improvements as from time to time determined by the Association;
 - (2) liability insurance with limits of not less than \$1,000,000.00 per person and \$5,000,000.00 per occurrence, insuring against any and all liabilities for bodily injury or death which may arise out of the ownership, maintenance or use of the common areas;
 - (3) property damage liability insurance and with deductible of not more than \$2,000.00 and a limit of not less than \$500,000.00 per accident; and
 - (4) if the same can be obtained at reasonable expense, an errors and omissions policy covering the officers and directors of the Association with such limits as the Board deems appropriate.

The policy or policies of insurance referred to in paragraphs (f)(2) and (f)(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 insurer or insurers to pay any amounts in excess of the maximum limits stated herein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall contain a provision expressly waiving any and all rights of subrogation to claims against the Declarant, its representatives and employees, and against 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 of Directors of the Association. The limits and terms of any policies of insurance obtained by the Association shall be subject to review by the Board of Directors, and, except as provided herein, may be changed as the Board of Directors deems necessary or advisable in its sole discretion.

- (i) To the extent permitted in Section 4.01, the Association shall appoint and remove members of the Design Committee and enter into such contractual arrangements as are necessary to insure that at all reasonable times there is a duly constituted and appointed Design Committee which includes a qualified Professional Member.
- (j) The Association shall discharge all obligations incurred in connection with the performance by the Design Committee of its duties, including retainer fees and compensation of the Professional Member, reimbursement of reasonable expenses of non-professional members and other actual and reasonable expenses of the Design Committee.

Section 5.05. Powers and Authority of Association. The Association shall have all the powers set forth in its Charter, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in its Charter and By-Laws and in this Declaration, 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 this Declaration and which may be necessary or proper for the peace, health, comfort, security, safety and/or general welfare of its members. Without limitation to the generality of the foregoing, the Association shall have the following powers:

- (a) The Association may take any such action as may be reasonable and prudent to enforce the provisions of this Declaration, any Association Rules established by the Association and such other and further covenants, conditions, limitations and restrictions as may be in force in regard to property in the Community Area and the Owners thereof.
- (b) Without liability to the Owners, occupants or users thereof for trespass, damage or otherwise, the Association may enter upon any area within the Community Area at any time for the purpose of maintaining and repairing such area or removing, reconstructing, refinishing, altering or repairing any improvement located upon such area, if the Owner, occupant or user of such area causes, suffers or permits conditions to exist thereon which constitute a violation of the provisions of this Declaration. The Association may maintain and repair any roads, sidewalks, drainage or flowage areas, schools, parks or other public areas within or adjoining the Community Area, including landscaping and planting the same and repairing improvements thereon when, in the opinion of the Board of Directors, public authorities have failed to do so in a manner befitting the standards of the Community Area. The Association shall also have the power and authority, in its own name and on its own behalf or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, or to assess fines for violations thereof in accordance with a schedule of fines adopted as a part of the Association Rules hereinafter mentioned.
- (c) In exercising or fulfilling any of its rights, duties or obligations under this Declaration, the Association shall have the power and authority:
 - (1) to contract and pay for or otherwise provide for the maintenance, restoration and repair of any improvements located upon the common areas and to contract and pay for or otherwise provide for the construction of improvements upon the common areas, all on such terms and conditions as the Association shall deem appropriate, provided that the Association similarly provide for the discharge of all liens arising out of any such 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 appropriate for the protection or benefit of the Community Area, the Association, the members of the Board of Directors, the members of the Design Committee, or the Owners, including without limitation: war risk insurance, builders risk insurance, workmen's compensation insurance, malicious mischief insurance and performance and fidelity bonds;
 - (3) to contract and pay for or otherwise provide for utility services as may be necessary or beneficial to serve the common areas, such as, water, sewer, garbage disposal, electricity, gas, telephone and other telecommunication services;
 - (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, including, without limitation to the generality of the foregoing, retainer fees and compensation for the Professional Member of the Design Committee;
 - (5) to contract and pay for or otherwise provide for fire, police and other security or protection services as the Association may deem necessary for the benefit of property in the Community Area and the Owners;
 - (6) to contract and pay for or otherwise provide for such materials, supplies, furniture, equipment and labor as the Association deems necessary for the landscaping, maintenance, repair, operation and management of the common areas, provided that the Association similarly provide for the payment and discharge of any and all liens placed or imposed upon any common area on account of any work done or performed by the Association in the fulfillment of its obligations and duties of upkeep, maintenance, repair, operation and management; and

- (7) to contract and pay for and otherwise provide to all Owners within the Community Area basic general services, such as refuse disposal and cable television and/or closed circuit television, provided that the services contracted for are provided on a commercially reasonable basis to all Owners and the Association's entering into a contract for such services is authorized by Owners entitled to two-thirds (2/3rds) of all the votes eligible to be cast by members of the Association.
- (d) The Association may grant and convey to any third party for reasonable compensation upon such terms as the Board may approve, such easements, rights-of-way, parcels or strips of land in, on, over or under any common area, which are to be used for or in connection with:
 - (1) constructing and maintaining public roads, streets, walkways, driveways, parkways and park areas;
 - (2) installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other facilities and equipment used for the transmission of electricity for lighting, heating, power, telephone, telecommunications and other purposes; and
 - (3) constructing, operating and maintaining public and private sewers, storm drains and land drains, water systems and sprinkler systems and water and gas lines or pipes and all appurtenant facilities and equipment.
- (e) The Association may from time to time employ the services of a manager or managers to manage certain of the affairs of the Association, and to the extent not inconsistent with the law, the Association may delegate to such manager or managers any of the Association's powers under this Declaration; provided, however, that the Association may not delegate to such manager or managers the power to execute any contract or agreement obligating the Association for a sum in excess of \$1,000.00 or calling for the performance of work or services not to be completed within sixty (60) days, or the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment.
- (f) The Association shall have the authority to pay, compromise or contest any and all taxes and assessments levied against all or any part of the common areas or upon any personal property belonging to the Association; provided, however, that prior to the sale or disposition of any Association property to satisfy the payment of such tax assessments, the Association shall insure that the lien upon such property and other Association property will be discharged.
- (g) The Association shall have the authority to acquire and accept title to any property, whether real, personal or mixed, to be used for the purposes of the Association in the discharge of its duties and obligations or the exercise of its powers and authority; provided, however, that nothing herein shall be construed as authorizing or empowering the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, or as authorizing or empowering the Association to carry on any business, trade, association or profession for profit; and provided further, that nothing herein shall be deemed to prevent the Association from charging reasonable user or membership fees for the use of recreational facilities located on private recreational areas so long as said fees are used solely to defray the costs of construction, maintenance, repair, operation or management of such facilities.
- (h) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose of, any portion of the common areas, together with any improvements thereon, or any other property of the Association, provided that the retention of such property is no longer necessary, advantageous or beneficial to the Association or to the Owners; and the Association may from time to time borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V, and may secure the repayment of same by a mortgage of the common areas 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 of real property shall be made unless the same shall have been approved by an affirmative vote of members of the Association entitled to not less than two-thirds (2/3rds) of the total number of votes eligible to be cast by the membership 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 described the amount of the borrowing and the security to be mortgaged, and shall have given the reasons therefor; provided, further, that the requirement of approval as aforesaid shall not apply to borrowings of less than \$10,000.00 which the Board deems necessary or advisable to meet unforeseen, unexpected or current expenses and obligations of the Association for which there are insufficient operating funds or reserves, as long as no mortgage of any real property of the Association is given to secure such borrowings. All proceeds of any disposition or borrowings, less the expenses thereof, shall be expended by the Association to acquire additional property for the benefit of the Association and the Owners, to improve the property of the Association or to meet the expenses and obligations of the Association.
- (i) During such time or times that the Declarant is entitled to two-thirds (2/3rds) or more of all the votes eligible to be cast by members of the Association, the Declarant shall have the right to cause the Association to enter into any such contract as may be within the power and authority of the Association without the necessity of calling an Association meeting to formally authorize such contract, provided that such contract is on terms which are commercially reasonable and that such contract is for services to be provided to all Owners or relates to matters of general benefit to the Community Area.

Section 5.06. EWA by Gentry Community Association Rules.

- (a) The Association may from time to time subject to the provisions of this Declaration adopt, amend and repeal rules and regulations known as the EWA by Gentry Community Association Rules (hereafter referred to as the "Association Rules") which shall govern and regulate certain activities in the Community Area, including but not limited to:
 - (1) the use of common areas and any facilities or equipment located thereon;
 - (2) the collection and disposal of refuse;
 - (3) the burning of open fires; and
 - (4) the keeping and maintenance of animals within the Community Area.

- (b) If the Association deems it necessary or advisable, the Association Rules may set forth a schedule of fines for specific violations of the provisions of this Declaration and other provisions of the Association Rules.
- (c) A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, certified by the Secretary or an Assistant Secretary of the Association, shall be filed in and shall be available for inspection at the office of the Association, and duplicate copies thereof shall be delivered to each Owner upon his acquisition of a lot or unit in the Community Area. A copy of each new rule and each amendment or repeal of an existing rule shall likewise be given to each Owner. Association Rules and each amendment or repeal of an existing rule shall be effective upon the filing thereof in the office of the Association, and when adopted and so filed, Association Rules shall have the same force and effect as if they were set forth and were a part of this Declaration. The failure to deliver to any Owner a copy of a rule or an amendment or repeal thereof shall not render such rule, amendment or repeal invalid.
- (d) If there is any conflict between any provision of the Association Rules and the provisions of this Declaration, the provisions of this Declaration shall control.

Section 5.07. Liability Of Members of the Board. No member of the Board of Directors of the Association shall be personally liable for any wrongful act, error or omission of the Association, its employees or representatives of the Association, the Design Committee or manager of the Association, provided that such member of the Board did not knowingly or willfully procure, suffer or permit such act, error or omission.

ARTICLE VI FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund. The Association shall maintain an operating fund into which shall be deposited all monies received by the Association, whether from maintenance assessments, special assessments, income attributable to the fund itself or any other rents, charges or fees levied by the Association. Said fund shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations in the exercise of its rights and powers under this Declaration and the Charter and By-Laws of the Association.

Section 6.02. Maintenance Assessments.

- (a) Except for the initial start-up period of the Association (i.e., when the Association actually commences making and collecting assessments from all Owners) which may not coincide with the Association's fiscal year, within thirty (30) days prior to the commencement of each Association fiscal year, the Board of Directors of the Association shall prepare an estimate of the costs and expenses to be incurred by the Association during such fiscal year in performing its functions, duties and obligations (including a reasonable provision for the repair, reconstruction, alteration or modification of improvements upon the common areas) but excluding any projected costs and expenses of substantial new improvements and in paying all fees and expenses of the Design Committee and shall also make an estimate of sufficient reserves for contingencies and replacements not to exceed fifty percent (50%) of the estimated operating expenses for the forthcoming year. From said estimates, the Board shall subtract:
 - (1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating funds at the start of such fiscal year which is attributable to maintenance assessments in the preceding fiscal year; and
 - (2) the estimated receipts for all user fees to be collected by the Association or anticipated rents from the leasing or renting of other facilities during the forthcoming fiscal year.

The amount thus determined shall constitute the total maintenance assessment base for such fiscal year which the Association is to collect from the members by making individual assessments as hereinafter provided.

- (b) In order to determine the individual maintenance assessments to be made for a particular fiscal year, the total maintenance assessment base, as calculated pursuant to subsection (a) above, shall be first divided by the sum of the following:
 - (1) the total number of units in the residential areas;
 - (2) the total number of lots in the residential areas which are owned by Owners other than the Declarant;
 - (3) the total number of votes exercisable by all Class C members;
 - (4) the number achieved by dividing by 4,000 the total area in square feet of commercial area land owned by the Declarant upon which the construction of improvements has been completed so as to render such improvements lawfully fit for occupancy or commercial use; and
 - (5) the total number of votes allocated to private recreational areas whether owned by the Declarant or Class D members.

The figure thus determined shall constitute the per unit assessment for such fiscal year and shall be fixed for the year notwithstanding the fact that subsequent to the determination of the per unit assessment figure, there may be an increase in the number of units or lots or other land in the Community Area on account of which the Owners thereof shall become subject to assessment during the course of the year as hereinafter provided.
- (c) At the outset of the fiscal year, individual maintenance assessments shall be made by assessing each member the per unit assessment figure, as calculated pursuant to subsection (b) above, for:
 - (1) in the case of each Class A member, each lot or unit owned by such member;
 - (2) in the case of each Class C and Class D member, each vote exercisable by such member in respect of land in the Community Area owned by such member; and
 - (3) in the case of the Class B member (Declarant) (i) each single family detached unit which the Class B member has retained and owned for a period of ninety (90) days or more; (ii) each condominium unit which the Class B member has retained and owned for a period of one hundred twenty (120) days or more; (iii) each 4,000 square feet of land described in subparagraph 6.02(b)(4) above; and (iv) each vote exercisable in respect of private recreational areas owned by the Class B member.

- (d) In the event that after the commencement of a particular fiscal year, there is added to or newly established within the Community Area additional lots, units or land on account of which the Owners thereof should be assessed as aforesaid, individual maintenance assessments shall be made on such Owners; but in each case of a lot or a unit or land becoming subject to assessment during the course of the fiscal year, the Owner thereof shall be assessed only that fraction of the per unit assessment figure for the year which is equal to the fraction of the fiscal year remaining as of the date that such unit, lot or land was added or newly established so as to be subject to assessment.
- (e) If at any time during the fiscal year, the total of maintenance assessments collected or anticipated to be collected appears, in the reasonable judgment of the Board, to be inadequate for any reason, including the inability to collect individual maintenance assessments, the Board may make further assessments in the amount of such actual or estimated inadequacy which shall be assessed to the members in the manner set forth in subsections (b), (c) and (d) above.
- (f) Individual maintenance assessments shall be due and payable by the Owners to the Association in equal installments for installment periods as the Association may from time to time select (e.g., semiannual, quarterly, monthly), and each installment payment shall be due on the first day of the installment period.
- (g) If for any reason the Board of Directors should fail to timely prepare the Association budget for the forthcoming fiscal year as set forth in subsection 6.02(a) above, such failure shall not impair or in any way affect either the right of the Association to make and collect maintenance assessments or the obligation of Owners to pay the same.

Section 6.03. Special Assessments. The Board may levy a special assessment upon any Owner for any act or failure or refusal to act or to otherwise comply with the provisions of this Declaration, the Association Rules or the Design Committee Rules by such Owner or by such Owner's tenants or by the family members, guests, invitees, employees, agents or contractors of any of them, which causes the Association to incur any liability or expense which would not normally have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the liability or expense incurred and shall be due and payable to the Association when levied. Such liability or expense shall be deemed to include without limitation, engineers', architects', attorneys' and accountants' fees when reasonably incurred by the Association.

Section 6.04. Exemptions. The Association shall be wholly exempt from the assessments provided for in this Article VI. Those entities described in subsection 3.04(c) shall also be exempt from assessments, except assessments made on account of their ownership of dwelling units in the Community Area.

Section 6.05. Default in Payment of Assessments.

- (a) Each assessment under this Article VI shall be a separate and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot or unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, shall be deemed to have covenanted and agreed to pay the same to the Association. If the Owner fails to pay such assessment or any installment thereof when due, the Owner shall be deemed in default and if payment is not made within ten (10) days of such default the Owner shall then be additionally liable to the Association for a late fee established by the Association on a uniform basis which shall be not more than ten percent (10%) of the unpaid assessment or installment or Twenty-Five Dollars (\$25.00), whichever is greater. In addition, the amount of the assessment not paid, together with the amount of any subsequent default, plus any late fees and all costs of collection, including reasonable attorneys' fees, shall be a lien upon the lot or lots owned by the Owner as of the date of assessment. Such lien shall be subject and subordinate to any lien for taxes and assessments lawfully imposed by government authority against the lot or unit of such Owner and to the lien of any mortgage upon the lot or unit of such Owner, and the sale or transfer of any lot or unit 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 the payments of assessments which become due prior to such sale, transfer or conveyance; provided, however, that no such sale, transfer or conveyance shall relieve such lot or unit or the purchaser or transferee thereof with regard to liability for assessments thereafter becoming due. Such lien may be foreclosed by suit by the Association in the manner of foreclosure of a mortgage of real property, and the Association shall have the 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) Upon request, the Association shall issue a certificate stating the amount of indebtedness secured by a lien upon any lot or unit. Such certificate shall be binding conclusively upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness existing on the date of the certificate. Any Owner may request that such a certificate be issued and may obtain a copy thereof for a reasonable fee charged by the Association.

Section 6.06. Design Committee Fund. If the Association collects fees for the review and processing of submissions to the Design Committee, all such fees shall be allocated to and kept in a special fund the proceeds of which shall be used exclusively to pay for expenses incurred by the Design Committee or in connection with the performance of its duties.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01. Subdivision and Consolidation.

- (a) No lot within the Community Area may be subdivided by any Owner until an application, including a map of the proposed subdivision, has been submitted to the Design Committee, together with a reasonable fee established by the Design Committee, and the Design Committee has approved the same. The Design Committee shall review the application to determine whether or not it conforms to the basic intent and purposes of this Declaration and to determine whether or not

any other Owner will be prejudiced by the proposed subdivision. The Design Committee shall approve or disapprove the application within thirty (30) days after submission of same, and in the event of disapproval, the Design Committee shall give to the Owner a written explanation of the reasons for disapproval. Failure to disapprove within said period of thirty (30) days shall be deemed approval of the application. If a proposed subdivision is approved, the Design Committee shall furnish to the Owner upon his request a certificate executed by one of the members of the Design Committee stating that the map submitted with the application for subdivision has been approved.

- (b) No two or more lots within the Community Area 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 subsection (a) above.
- (c) Nothing contained in this Section 7.01 shall apply to the subdivision of any lot or the consolidation of two or more lots into one or more lots by the Declarant, a Controlled Entity of Declarant or a Subdeveloper.

Section 7.02. Conveyance of Common Areas; Reservation of Easements and Rights-of-Way and Classification of Land Area; Sewer and Water Systems.

- (a) The Association shall accept as common areas all real property and interests in real property within the Community Area conveyed to it by the Declarant or a Controlled Entity of Declarant and subsequently classified or reclassified as such, provided that such property is free from reservation, liens and encumbrances except as follows:
 - (1) the lien of any non-delinquent real property taxes and assessments;
 - (2) such easements and rights-of-way as may be reserved to the Declarant, a Controlled Entity of Declarant or the Campbell Estate or previously granted by the Declarant or Controlled Entity of Declarant to any person or entity in connection with the development of the Community Area.
 - (3) such rights as may be reserved to the Declarant, a Controlled Entity of Declarant or Subdeveloper to have, hold, grant and convey easements and rights-of-way which provide access to real property contiguous to the common areas and easements and rights-of-way which permit and serve the purposes of constructing, erecting, operating and maintaining: (i) roads, streets, driveways, walkways, parkways and park areas; (ii) poles, wires, conduits and other equipment and facilities for the transmission of electricity, gas, telephone, radio, cable television, telecommunications and other purposes, whether private or publicly owned and operated; and (iii) public or private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, water sprinkler systems, and any and all equipment and facilities used in connection therewith;
 - (4) such obligations as may be imposed directly or indirectly by 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 or governmental authority having jurisdiction over such property;
 - (5) such rights as may be reserved to the Declarant pursuant to subsection 7.02(c);
 - (6) such easements and rights-of-way for roads, pipelines, ditches, telephone, gas and electric lines and any other utilities as may have been previously granted to public utilities, governmental agencies or private corporations or individuals.
- (b) The land classification of any property within the Community Area which is not a common area and which is owned by persons or entities other than the Declarant may be changed to a common area by the transfer of such property to the Association by all persons having any right, title or interest therein, provided that the transfer of said property is accepted by the Association by the affirmative vote of members of the Association who are entitled to not less than two-thirds (2/3rds) of the total number of votes eligible to be cast by the membership at a meeting of the Association duly called, the notice of which shall have described the property to be accepted as a common area; provided that any such property shall be free of any exceptions, liens and encumbrances, except those as are provided for in subsection 7.02(a) above.
- (c) The Declarant may, without the prior approval of the Association, construct, reconstruct, refinish, alter or repair any improvement upon, may make or create any excavation or fill upon, may change the natural or existing drainage of, or may remove or plant any trees, shrubs or ground cover upon any common area previously conveyed to the Association, if the Declarant determines that any such work:
 - (1) is reasonably necessary for the installation of utilities serving any property within the Community Area;
 - (2) is reasonably necessary for the construction of any facility to be used by the Owners;
 - (3) is desirable in order to provide or improve access to or enhance the use and enjoyment of such common area; or
 - (4) is desirable to protect, support or preserve any property which constitutes a part of the Community Area; andprovided that prior to commencing any such work, the Declarant shall furnish the Association with sufficient assurance that no liens, charges or encumbrances will be suffered or permitted to attach to such common area as a result of the work thereon. In addition, for as long as the Declarant owns any property within the Community Area for development and/or sale, the Declarant shall have the right to erect and/or post on any common area signs relating to Declarant's development and sales activities within the Community Area.

Section 7.03. Condemnation of Common Areas. If at any time all or any portion of the common areas or any interest therein is 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 in any proceedings relating to such condemnation, such right of participation being reserved exclusively to the Association, which shall in its name alone represent the interest of all Owners.

Section 7.04. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association, and the Association shall accept the same effective upon the recording by the Declarant of such delegation, transfer, assignment, conveyance or release.

Section 7.05. Obligations of Owners. Avoidance. Termination.

- (a) No Owner through 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 or pursuant to the provisions of this Declaration.
- (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 this Declaration.

Section 7.06. Notices. Documents. Delivery.

- (a) Delivery of any notice or other document as permitted or required by the provisions of this Declaration may be accomplished either by delivery in person or by mail. If delivery is made by mail, delivery upon the Association shall be deemed accomplished forty-eight (48) hours after a copy of the notice or other document has been deposited in the United States mail, postage prepaid, addressed to the EWA by Gentry Community Association at the address designated from time to time by written notice to the Owners. Delivery by mail upon the Design Committee shall be deemed accomplished forty-eight (48) hours after a copy of the notice or other document has been deposited in as aforesaid addressed to the Design Committee in care of the EWA by Gentry Community Association at the latter's then designated address. The post office address of an Owner shall be the street address in the Community Area of such Owner or such other address as such Owner shall designate in writing to the Association. Delivery by mail to an Owner shall be deemed accomplished forty-eight (48) hours after a copy of the notice or other document 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 one of the Owners shall constitute effective delivery to all Owners of such lot.
- (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.

Section 7.07. Amendment or Repeal - Duration.

- (a) In addition to the rights reserved to the Declarant pursuant to Sections 2.01 and 2.04 to amend the Master Plan attached to this Declaration as Exhibit "B" and to supplement the provisions of this Declaration with respect to property added to the Community Area, and except as provided in subsection 7.07(b) below, this Declaration or any part hereof may be amended or repealed as and when:
 - (1) by affirmative vote of Owners entitled to not less than two-thirds (2/3rds) of the total number of votes eligible to be cast by the Owners, the Owners have approved the proposed amendment or amendments or the repeal of any portion or portions of this Declaration at a meeting duly called, the notice of which meeting shall have stated as a purpose the consideration of such amendment or repeal and shall have stated the substance of the proposed amendments or indicated the provisions to be repealed, as the case may be; and
 - (2) a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been so approved pursuant to this paragraph shall have been recorded; or
 - (3) a written instrument also setting forth in full said amendment or amendments, including any portion or portions thereof repealed, executed by Owners entitled to not less than two-thirds (2/3rds) of the total number of votes eligible to be cast by the Owners shall have been recorded.
- (b) Notwithstanding the provisions of subsection 7.07(a) above, no provision of this Declaration may be amended or repealed the effect of which amendment or repeal would be to limit, abridge, modify or terminate any of the rights, easements, privileges and immunities of the Declarant or any of the authority and powers reserved to the Declarant, unless the Declarant consents to and approves of such amendment or repeal.
- (c) Notwithstanding the provisions of Subsection 7.07(a) above, no provision of this Declaration may be amended or repealed in any way the effect of which amendment or repeal would be to change, limit, abridge or terminate any of the rights, easements, privileges and powers specifically afforded to the Campbell Estate under this Declaration without the prior written consent of the Campbell Estate, which consent shall be at the sole discretion of the Campbell Estate and may be withheld by the Campbell Estate for any reason or for no reason. Any other amendment to this Declaration shall require the written consent of the Campbell Estate, which consent shall not be unreasonably withheld.
- (d) The failure or inability to note a certificate or written instrument setting forth a duly approved amendment or repeal of a provision of this Declaration on the Certificate of Title of an Owner or an Owner's copy thereof shall not render such amendment or repeal invalid or void, it being hereby expressly provided that a diligent and good faith attempt to record any such certificate or written instrument, whether wholly or partially successful, shall be sufficient to effect the amendment or repeal set forth therein.

Section 7.08. Enforcement; Non-Waiver.

- (a) Except as otherwise expressly provided herein, the Association shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by or pursuant to this Declaration; and the cost of enforcement, including court costs and attorneys' fees, shall be the joint and several liability of and shall be paid by the person or persons who violated any such limitation, restriction, covenant or condition or failed to pay or satisfy when due any such lien or charge and the Owner with respect to whose property the violation occurred or whose family members or tenant or the guest, invitee, employee, agent or contractor of any of them committed the violation. Entry upon the lot or unit of any Owner or other action to enforce any such limitation, restriction, covenant,

condition, obligation, lien or charge may be made or taken only after reasonable notice and demand has been given to the Owner concerned to cure or rectify the violation involved, provided that no notice need be given if the violation involved poses an immediate threat of personal injury or property damage. Inasmuch as any breach of any provision of this Declaration may not adequately be compensated by the recovery of damages, the Declarant, in addition to all other remedies available at law or in equity, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach by any Owner. No delay, failure or omission on the part of the Declarant in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of any failure by the Declarant to bring any action on account of any violation or breach, or threatened violation or breach, by any Owner of the provisions of this Declaration, or any rules or regulations of the Association, however long continued.

- (b) Notwithstanding any provision of this Declaration to the contrary, in order to preserve, protect and enhance the value of the Campbell Estate's lands in the District of Ewa through assurance of the continued orderly and compatible planned development of the Community Area, the Campbell Estate shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by or pursuant to this Declaration upon any Owner or upon any property within the Community Area following thirty (30) days' written notice to the Declarant and the Association. The cost 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 or satisfy when due any such lien or charge. Entry upon the lot or unit of any Owner or other action by the Campbell Estate to enforce any such limitation, restriction, covenant, condition, obligation, lien or charge may be made or taken only after reasonable notice and demand has been given to the Owner concerned to cure or rectify the violation involved and to the Declarant and the Association, provided that no notice need be given if the violation involved poses an immediate threat of personal injury or property damage. Inasmuch as any breach of any provision of this Declaration may not adequately be compensated by the recovery of damages, the Campbell Estate, in addition to all other remedies available at law or in equity, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach by any Owner. No delay, failure or omission on the part of the Campbell Estate in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Campbell Estate for or on account of any failure by the Campbell Estate to bring any action on account of any violation or breach, or threatened violation or breach, by any Owner of the provisions of this Declaration, or any rules or regulations of the Association, however long continued.
- (c) Nothing contained in this Declaration shall be deemed to restrain or abridge the right of any aggrieved Owner to seek abatement of any nuisance created or caused by any other Owner or to seek enforcement of the provisions hereof against any other Owner or the Association by proper legal proceedings brought in a court of competent jurisdiction, but no Owner shall have the right to bring or maintain an action against the Association or its Board of Directors for failure to enforce the provisions of this Declaration against another Owner.
- (d) Every act or omission which results in the violation of any limitation, restriction, covenant or condition set forth as a part of this Declaration, including any Association Rule or Design Committee Rule, is hereby declared to be and to constitute a nuisance, and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, provided, however, that only the Association and its duly authorized agents may enforce any limitation, restriction, covenant or condition herein set forth by its or their own action without authority of a court having jurisdiction.
- (e) The remedies provided for in this Declaration are cumulative and non-exclusive.
- (f) The failure in any case to enforce any limitation, restriction, covenant, condition, obligation, lien or charge now or hereafter imposed by or pursuant to this Declaration shall not constitute a waiver of any right to enforce the same in another case.

Section 7.09. Successors of Declarant. The rights, powers, privileges and immunities and the duties, responsibilities and obligations of the Declarant as provided in this Declaration may be assigned and a successor of Declarant thereby appointed, provided that at any given time, there shall be only one Declarant, and provided further that any such assignment shall be subject to the prior written consent of the Campbell Estate, which consent shall not be unreasonably withheld. Subject to the aforesaid limitations, by appropriate express provision in the deed or instrument of conveyance from the Declarant to the grantee of Declarant's interest in real property within the Community Area, the Declarant may assign, transfer, delegate and convey to such grantee all of the rights, reservations of right, easements, authority, powers, privileges, immunities, duties, responsibilities, liabilities and obligations provided to and for the Declarant under and pursuant to this Declaration with respect to the real property so conveyed; and by virtue of such express provision and only by virtue thereof, such grantee shall be appointed and be the successor Declarant and shall succeed to and have all of such rights, reservations of right, easements, authority, powers, privileges, immunities, duties, responsibilities, liabilities and obligations, the same as if the grantee were the Declarant named herein. An assignment to a successor Declarant as aforesaid shall be effective notwithstanding the fact that the successor Declarant acquires only a portion of the real property within the Community Area owned by the former Declarant.

Section 7.10. Controlled Entities of Declarant. Anything in this Declaration to the contrary notwithstanding, the Declarant, with the prior written consent and approval of the Campbell Estate, may designate certain entities over which the Declarant or Thomas H. Gentry, husband of Diane Elaine Gentry, of Honolulu, Hawaii, retains effective operating control as a "Controlled Entity". The designation of any Controlled Entity shall be accomplished in the manner and with the consequences for the purposes of this Declaration as hereinafter set forth.

- (a) The designation of a Controlled Entity shall be accomplished in the following manner:
 - (1) the Controlled Entity shall be designated as such on the records of the Association;
 - (2) in the case of lots, units or parcels of land within the Community Area to be conveyed by the Declarant to a Controlled Entity, the instrument or instruments of conveyance shall expressly provide that for the purposes of this Declaration, the grantee shall be deemed a Controlled Entity of Declarant and that for as long as the real property conveyed is owned by the grantee and is subject to the provisions of this Declaration, the provisions of this Declaration shall apply thereto as if the real property were owned by the Declarant, and such instrument or instruments shall contain the consent of the Campbell Estate;
 - (3) in the case of land to be added to the Community Area which is owned by a Controlled Entity, the documents adding the land to the Community Area in accordance with Section 2.03 of this Declaration shall expressly provide that for the purposes of this Declaration, the named owner of the land shall be deemed a Controlled Entity of Declarant and that for as long as the land is owned by the named owner and is subject to the provisions of this Declaration, the provisions of this Declaration shall apply thereto as if the land were owned by the Declarant and each of such documents that is to be recorded shall contain the consent of the Campbell Estate;
 - (4) in the event that a former Declarant retains ownership of lots, units or parcels of land within the Community Area after the appointment of a successor Declarant as provided in Section 7.09, the former Declarant shall be deemed a Controlled Entity of the successor Declarant without further action other than the designation of the former Declarant as a Controlled Entity on the records of the Association.
- (b) For the purposes of this Declaration, the designation of a Controlled Entity as aforesaid shall have the following consequences:
 - (1) For as long as the Controlled Entity owns real property within the Community Area with respect to which a proper Controlled Entity designation has been made, the provisions of this Declaration shall apply to such real property as if it were owned by the Declarant. Without limitation to the generality of the foregoing, the presumption of compliance set forth in Section 4.04 shall apply to any and all improvements thereon as if they were caused to be constructed by the Declarant; membership in the Association and membership rights and obligations, including voting and liability for assessments, in respect of such real property, shall inure to the Declarant and shall be determined as if such real property were owned by the Declarant; and all specific rights, powers and authority reserved to the Declarant in this Declaration in respect of land within the Community Area owned by the Declarant shall likewise be reserved in respect of such real property owned by the Controlled Entity to be exercised by the Declarant or the Controlled Entity as applicable law requires.
 - (2) For as long as the Controlled Entity owns real property within the Community Area with respect to which a proper Controlled Entity designation has been made, the Declarant shall be jointly and severally liable along with the Controlled Entity for any proper assessments made on such real property pursuant to this Declaration.
 - (3) Development of real property within the Community Area owned by a Controlled Entity shall be in compliance with the provisions of Paragraph 6 of the Second Replacement Development Agreement or the equivalent provisions of any successor agreement.

Section 7.11. Exercise of Campbell Estate's Rights and Duties. The rights, powers, privileges and immunities and the duties, responsibilities and obligations of the Campbell Estate as provided for in this Declaration shall inure to the benefit of and bind the successor or successors of the Campbell Estate for as long as this Declaration remains in effect; provided, however, that for the purposes of exercising or asserting any such rights, powers, privileges and immunities or fulfilling any such duties, responsibilities and obligations, there shall be at any time only one person or entity authorized and empowered to act. If at any time, such rights and duties of the Campbell Estate under and pursuant to this Declaration have vested in multiple parties, such parties shall designate in writing in form suitable for recordation a single agent to act for all of them, and for the purposes of this Declaration, said agent shall be deemed to have full power, authority and responsibility to act for all of them.

Section 7.12. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

- (a) All of the limitations, restrictions, covenants and conditions contained in this Declaration shall be liberally construed to promote and effectuate the fundamental concept and purpose of EWA by Gentry as set forth in the introductory paragraphs of this Declaration.
- (b) No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over EWA by Gentry or any part thereof. Anything in this Declaration to the contrary notwithstanding, if all uses to which a lot or unit may be put under the provisions hereof are illegal under the applicable zoning ordinances or statutes, said lot or unit shall remain subject to all other provisions of this Declaration which lawfully apply to the lot.
- (c) References to the Second Replacement Development Agreement in this Declaration are not intended and shall not be construed as incorporating said Agreement or any part thereof in this Declaration; and no person or entity not a party to the Second Replacement Development Agreement may claim any right or benefit by virtue of the provisions thereof.
- (d) Notwithstanding the provisions of subsection (a) above, the limitations, restrictions, covenants and conditions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitation, restriction, covenant or condition shall not affect the validity or enforceability of any other provision.
- (e) The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.
- (f) All titles used in this Declaration, 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 this Declaration.

IN WITNESS WHEREOF, the Declaration and Gentry Homes, Ltd. have executed this Declaration on the day and year first above written.

GENTRY DEVELOPMENT COMPANY, a
registered Hawaii limited partnership
By Its Sole General Partner,
GENTRY-PACIFIC, LTD.

By /s/ Joseph J. Ramia
Its Vice President

By /s/ Harry D. Huffman
Its Treasurer

GENTRY HOMES, LTD.

By /s/ Joseph J. Ramia
Its President

By /s/ Harry D. Huffman
Its Treasurer

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

On this 21st day of July, 1988, before me appeared Joseph J. Ramia and Harry D. Huffman, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Treasurer, respectively, of GENTRY-PACIFIC, LTD., a Hawaii corporation, the General Partner of GENTRY DEVELOPMENT COMPANY, a Hawaii limited partnership; 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 the said officers acknowledged said instrument to be the free act and deed of said corporation as said General Partner of GENTRY DEVELOPMENT COMPANY, a Hawaii limited partnership.

/s/ M. Kodama
Notary Public, State of Hawaii

My commission expires May 26, 1990

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

On this 21st day of July, 1988, before me appeared Joseph J. Ramia and Harry D. Huffman, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Treasurer, respectively, of GENTRY HOMES, LTD., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

/s/ M. Kodama
Notary Public, State of Hawaii

My commission expires May 26, 1990

EXHIBIT "A"

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

FIRST:

Lots 4255 through 4361, inclusive, as shown on Map 435, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees Under the Will and of the Estate of James Campbell, Deceased;

Being all of the land described in Transfer Certificate of Title No. 313,483 issued to Gentry Homes, Ltd.

SECOND:

Lots 4379 to 4408, inclusive, as shown on Map 439, filed in the Office of said Assistant Registrar with said Land Court Application No. 1069;

Being all of the land described in Transfer Certificate of Title No. 316,132 issued to Gentry Homes, Ltd.

THIRD:

Lot 4254 and Lots 4362 to 4367, inclusive, and Lots 4369 to 4372, inclusive, all as shown on Map 435, filed in the Office of said Assistant Registrar with said Land Court Application No. 1069, and Lots 4409 to 4489, inclusive, as shown on Map 439, filed in the Office of the said Assistant Registrar with said Land Court Application No. 1069;

Being portions of the land described in Transfer Certificate of Title No. 310,801 issued to Gentry Development Company.

FOURTH:

Lot 3425-A, area 100.0 acres, as shown on Map 372, filed in the Office of said Assistant Registrar with said Land Court Application No. 1069;

Being a portion of the land described in Transfer Certificate of Title No. 310,801 issued to Gentry Development Company.

EXHIBIT 51



STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Honolulu, Hawaii

ARTICLES OF INCORPORATION
(Section 415B-34, Hawaii Revised Statutes)

[as received by Department of Commerce and Consumer Affairs on August 5, 1988]

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii, certify as follows:

I
NAME

The name of the corporation shall be EWA BY GENTRY COMMUNITY ASSOCIATION.

II
LOCATION

The location of the corporation shall be in the City and County of Honolulu, State of Hawaii, and the address of its initial office shall be 737 Iwilei Road, Honolulu, Hawaii 96817.

III
PURPOSE

This corporation does not contemplate pecuniary gain or profit to the members thereof, and the specific and exclusive purposes for which it is formed are to provide for the management, maintenance, protection, preservation, architectural control, planned development and mutually compatible use of the property described in Exhibit "A" attached to the Declaration hereinafter described (hereinafter called the "Community Area") and all additions thereto, and to promote the health, safety and welfare of its members, all in a manner consistent with this Articles of Incorporation, the By-Laws hereinafter mentioned and the EWA by Gentry Community Area Declaration of Covenants, Conditions and Restrictions dated July 21, 1988, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1568352 (hereinafter called the "Community Area Restrictions" or the "Declaration").

IV
POWERS

In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to nonprofit corporations, the corporation shall have succession by its corporate name in perpetuity and shall have the power:

(a) To provide, own, acquire, lease, plan, design, develop, construct, reconstruct, maintain, restore, repair, manage and administer, as the case requires, utility facilities and services, recreational areas and facilities, park and landscape areas, common areas and such other improvements, facilities and services in or upon the common areas of the Community Area, all as provided for in the Community Area Restrictions.

(b) To obtain, maintain and pay for all such insurance policies or bonds deemed appropriate for the protection and benefit of the Community Area as provided for in the Community Area Restrictions.

(c) To pay all expenses incident to the conduct of the business of the corporation.

(d) To enforce by any lawful means any and all covenants, conditions, limitations, restrictions and agreements applicable to the Community Area under and pursuant to the Community Area Restrictions including such or otherwise.

(e) Insofar as permitted by law, and in accordance with the Community Area Restrictions, to do any other thing that will promote the common benefit and enjoyment of the Owners of lots and/or dwelling units in the Community Area including the adoption and publication of rules and regulations governing the use of common areas, improvements and facilities in the Community Area and the personal conduct of any person thereon and the establishment of penalties for infractions thereof.

(f) In connection with the exercise of any powers conferred upon the corporation, to levy regular assessments upon its members in accordance with the Community Area Restrictions, which assessments shall constitute liens upon the lands assessed subject to the enforcement provisions hereinafter provided.

(g) In order to defray extraordinary expenses incurred by the corporation as a result of the failure or refusal of any members to abide by or otherwise to comply with the Community Area Restrictions, the Design Committee Rules or the Association Rules hereinafter mentioned or to enforce compliance with same, to levy special assessments and fines against such members, which assessments and fines shall constitute liens upon the lands assessed, subject to the enforcement provisions hereinafter provided, and the rights to which liens may be pledged, hypothecated or transferred as may be required.

(h) To collect and enforce payment by any lawful means, of all charges and assessments and fines provided for herein or in the Community Area Restrictions or the By-Laws, including the sale of land subject to any assessment lien at public or private sale on such reasonable terms and conditions as the directors of this corporation shall determine, the proceeds of any such sale to be applied first to the payment of the corporation's costs, including legal expenses, of the sale proceedings, next to the payment of the delinquent amount secured by the lien and the balance, if any, to the owners of the land as their interests may appear.

(i) To sue and be sued in any court.

(j) To make and use a common seal and to alter the same at its pleasure.

(k) To acquire (by gift, purchase, lease or otherwise), own, hold, improve, build upon, operate, maintain, rent, lease, assign, sell, transfer, convey, donate, dedicate for public use or dispose of such property, real, personal and mixed, as the purposes of the corporation shall require or appear to be served, without limit as to amount, and to borrow money, to mortgage, pledge and hypothecate the same to secure any debt of the corporation, subject to the provisions of Article V of the Community Area Restrictions.

(l) To draw, make, accept, endorse, assign, discount, execute and issue promissory notes, bills of exchange, bills of lading, drafts, obligations, certificates, stock and other warrants, and other instruments to be assignable, negotiable or transferable by delivery or to order, or otherwise, as the purposes of the corporation shall require.

(m) To enter into and perform contracts, undertakings and obligations of every kind and character consonant with the purposes of the corporation and subject to the limitations hereinabove set forth.

(n) To appoint such subordinate officers and agents as the activities of the corporation may require.

(o) To make By-Laws not inconsistent or in conflict with the law, the Community Area Restrictions or these Articles.

(p) To adopt rules and regulations called "Association Rules" not inconsistent with and subject to the Community Area Restrictions, governing and regulating certain activities within the Community Area, all of the mutual benefits and welfare of the members of the corporation.

(q) And generally to possess and exercise any and all rights, privileges, powers and immunities which are accorded to the corporation under the Community Area Restrictions or which are now or may hereafter be secured by law to nonprofit corporations and which are reasonably incidental to the fulfillment of the objects and purposes hereinabove set forth and to the exercise of any powers possessed by or granted to this corporation.

V

MEMBERSHIP

(a) Each and every person, corporation, partnership or other legal entity being an "Owner" as hereinafter described shall be a member of the Association.

(b) For the purposes of determining membership status in the Association, the term "Owner" shall be deemed to include:

(1) An owner of any "lot" or "unit" within a residential area or the Community Area as those terms are defined and described in the Community Area Restrictions, including any government agency or instrumentality which owns a unit; provided that except for the Declarant hereinafter mentioned, an owner of residential area land not subdivided into lots shall not be deemed an "Owner" for the purposes of determining membership in the Association until the land or a portion thereof has been subdivided into lots, or if the land is being developed as a condominium project, until at least one condominium unit thereon has been substantially completed and is lawfully fit for occupancy. As such residential area land is subdivided into lots or condominium units are completed thereon, the owner thereof shall be deemed an "Owner" for the purposes of determining membership in the Association as to each lot created or unit completed.

(2) With regard to a condominium unit within the Community Area, an "apartment owner" as that term is defined in the Condominium Law of the State of Hawaii (Hawaii Revised Statutes [1985], Chapter 514A, or the law of the State of Hawaii thereunto succeeding) but only from and after such time as the condominium unit has been completed and is lawfully fit for occupancy;

(3) An owner of any parcel of land within a commercial area of the Community Area;

(4) An owner of any parcel of land within a Private Recreational Area of the Community Area;

(5) An owner of any parcel of land within the Community Area which is a private eleemosynary, religious, educational, community or civic institution or organization; and

(6) The Declarant as named in the Community Area Restrictions (or any successor of the Declarant), so long as the Declarant (or its successor) is the owner of any unit or land, whether or not subdivided into lots, within the Community Area.

(c) No membership shall be terminated or forfeited, and no member shall be expelled, except upon transfer of his interest in the Community Area which entitles him to membership; provided, however, that upon execution, delivery and recordation or filing of a valid agreement of sale of such interest therein, the vendor's membership, including voting rights incident thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed or assignment of lease in compliance with said agreement of sale or reversioning in the vendor in the event of termination of said agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner.

(d) The membership of the Association shall be divided into four (4) classes of membership as follows:

(1) Class A members shall include all owners described in subparagraphs (b)(1) and (b)(2) above, including any "Subdeveloper", as that term is defined and described in the Community Area Restrictions, from and after such time as the land owned by any such Subdeveloper has been subdivided into lots, or if the land is being developed as a condominium project, from and after such time as at least one condominium unit thereon has been completed and is lawfully fit for occupancy.

(2) The Class B member shall be the Declarant;

(3) Class C members shall include all owners described in subparagraphs (b)(3), and (b)(5) above; and

(4) Class D members shall include all owners described in paragraph (b)(4) above other than the Declarant.

(e) The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be exclusively as set forth in the Community Area Restrictions, these Articles and the By-Laws of the Association.

(f) The right of any member to vote on matters concerning the corporation may be suspended for a period not exceeding sixty (60) days by action of the Board of Directors of the Association during the period when the member shall be in default in the payment of any assessment or charge levied by the corporation; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Board of Directors has adopted and published rules and regulations governing the use of the common areas, improvements and facilities, and the personal conduct of any person thereon, as provided in paragraphs (d) and (e) of Article IV, they may, in their discretion, suspend the right to vote of any such person for violation of such rules and regulations until such time as the person has complied with such rules and regulations. Suspension of a member's right to vote shall not be deemed to prevent or interfere with the right of an Owner to use his lot or unit.

VI

VOTING RIGHTS

Members of the Association shall be entitled to vote as follows:

(a) Each Class A member shall be entitled to one (1) vote for each lot or unit owned, provided that if more than one person or entity owns a particular lot or unit, any one of said persons or entities may exercise the one vote attributable to the ownership of said lot or unit unless a co-Owner objects, in which case the exercise of the one vote by any co-Owner shall require the unanimous written consent of all co-Owners.

(b) The Class B member (Declarant) shall be entitled to three (3) votes for each lot or unit owned by it or a "Controlled Entity", as that term is defined and described in the Community Area Restrictions, and three-quarters of one (0.75) vote for each one thousand (1,000) square feet, rounded to the nearest thousand, of land in the Community Area owned by it or a Controlled Entity (not including private recreational area land) which has not yet been subdivided into lots; provided, however, that at such time as seventy-five percent (75%) of the total land area in the Community Area, not including land classified as private recreational area land, has been developed and the lots, units or sites developed thereon have been conveyed to individual Owners other than the Declarant, or a Controlled Entity or a Subdeveloper, the votes exercisable by the Declarant shall be reduced to one (1) vote for each lot or unit owned by

it or a Controlled Entity and one-fourth of one (0.25%) vote for each one thousand (1,000) square feet of land owned by it or a Controlled Entity (not including private recreational land) which has not yet been subdivided into lots. The Declarant shall also be entitled to the number of votes allocated to private recreational area land in the Community Area owned by the Declarant or a Controlled Entity which votes were allocated pursuant to Section 2.04 of the Community Area Restrictions at the time such land was added to the Community Area.

(c) Each Class C member shall be entitled to one-fourth of one (0.25) vote for each one thousand (1,000) square feet of land owned rounded to the nearest thousand.

(d) Each Class D member shall be entitled to the number of votes allocated to the land owned by such member which was allocated by the Declarant pursuant to Section 2.04 of the Community Area Restrictions at the time such land was added to the Community Area.

VII OFFICERS; BOARD OF DIRECTORS

(a) The officers of the corporation shall be a President, one or more Vice Presidents as may be determined in accordance with the By-Laws, a Secretary and a Treasurer. The corporation may have such additional officers as may be determined in accordance with the By-Laws from time to time. The officers shall have the powers, perform the duties and be appointed as may be determined in accordance with the By-Laws. Any person may hold two offices of said corporation if so provided by the By-Laws.

(b) The Board of Directors of the corporation shall consist of not less than three (3) nor more than nine (9) persons. The directors (and alternate directors and/or substitute directors, if any) shall be elected or appointed in the manner provided in the By-Laws and may be removed from office in the manner provided in the By-Laws and all vacancies in the office of director or of any officer shall be filled in the manner provided in the By-Laws; provided, however, that the By-Laws shall specify that the regular election of directors and officers and the filling of vacancies in the office of directors or of any officer shall be accomplished during the annual meetings of the corporation to be held on such day and at such time and place specified pursuant to the By-Laws.

The names and addresses of the initial officers and directors of the corporation are as follows (no less than one-third of the directors are residents of the State of Hawaii):

OFFICE HELD	NAME	RESIDENCE ADDRESS
President	Dean B. Wise	94-1010 Oli Loop Waipahu, Hawaii 96797
Vice President	Harvey Jay Migdal	38 S. Judd St. #24-B Honolulu, Hawaii 96817
Secretary-Treasurer	Jeffrey C. Dinsmore	556 Mananai Place #19-E Honolulu, Hawaii 96818

(c) The affairs of the corporation shall be conducted by the Board of Directors and all the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors except as otherwise provided by law, these Articles of Incorporation, the By-Laws of the corporation or the Community Area Restrictions, to and including full power to make and adopt proper rules and regulations for the conduct of the affairs of the corporation.

VIII IMMUNITY FROM LIABILITY

No director or officer of the corporation shall be liable to the corporation for any loss or damage suffered by it on account of any action or omission by him as such director or officer, unless such director or officer shall, with respect to such action or omission, be or have been guilty of willful misconduct in the performance of his duties as such director or officer.

Each person who is now or hereafter shall be a director or officer of the corporation, and his personal representatives, shall be indemnified by the corporation against all costs and expenses reasonably incurred by or imposed upon him in connection with any action, suit, proceeding, investigation or inquiry to which he may be made a party by reason of his being or having been a director or officer of the corporation (whether or not he continues to be a director or officer at the time of the incurring or imposition of such costs and expenses) except in relation to matters as to which he shall be finally adjudged in any action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such director or officer. If in any such action, suit or proceeding there is a final adjudication that such director or officer was, or that such director or officer was not guilty of such willful misconduct, the Board of Directors and each director and officer of the corporation may conclusively rely thereon and in the absence of any final adjudication in any such action, suit or proceeding, the Board of Directors and each director and officer of the corporation may conclusively rely upon the opinion of legal counsel selected by or in the manner designated by the Board of Directors.

The immunity from liability and the indemnity provided for in this Article VIII shall be in addition to any rights to which the director or officer of the corporation may be entitled by law, pursuant to vote of the members of the corporation, or otherwise.

IX NON-PROFIT ORGANIZATION

The corporation is organized for charitable and civic purposes only and is not organized for profit, it will 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. Any other provision of these Articles to the contrary notwithstanding, the corporation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation as set forth in these Articles.

X VOLUNTARY DISSOLUTION

No voluntary dissolution of the corporation or liquidation of its assets shall take place without the affirmative vote of three-fourths (3/4ths) of the members of the corporation present at a meeting of the members of the corporation duly called and held for the purpose of authorizing such dissolution and/or liquidation. Written notice of the meeting setting forth such purpose shall be given to all members not less than thirty (30) days prior to said meeting. Upon dissolution or liquidation, the assets of the corporation, after payment of the corporation's just debts, shall be dedicated to one or more appropriate public agencies or instrumentalities to be devoted to purposes as nearly as practicable the same as those to which the assets were required to be devoted by the corporation. If such dedication is refused acceptance, such assets shall be granted, conveyed or assigned to any one or more non-profit corporations, associations, trusts or other organizations then qualifying as exempt organizations under Section 501 (c)(3) of the Internal Revenue Code of 1954 to be devoted to charitable purposes and uses that would most nearly reflect the purposes and uses to which the assets were required to be devoted by the corporation.

XI
MERGERS AND CONSOLIDATION

To the extent permitted by law, the corporation may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of the members who are entitled to three-fourths (3/4ths) of the total number of votes eligible to be cast by members of the corporation.

XII
LIABILITY

The property of the corporation shall alone be liable in law for the payment of its debts and discharge of its obligations. Neither the members of the corporation nor the members of the Board of Directors nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that every member of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as herein provided.

XIII
AMENDMENTS

These Articles of Incorporation may be amended from time to time by vote of not less than two-thirds (2/3rds) of the members of the corporation present at a meeting duly called and held for the purpose. No amendment shall be effective unless and until a certificate setting forth the amendments signed and verified by two authorized corporate officers has been filed in the Office of the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii and approved by said Director.

XIV
SUBJECT TO GENERAL LAWS

The corporation shall be subject to all general laws now in force or hereafter enacted with regard to nonprofit corporations.

We certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that we have read the above statements and that the same are true and correct.

Witness our hands this 2nd day of August, 1988.

Harvey Jay Migdal
(Type/Print Name of Incorporator)

/s/ Harvey Jay Migdal
(Signature of Incorporator)

**BY-LAWS
OF
EWA BY GENTRY COMMUNITY ASSOCIATION
ARTICLE I**

Section 1. **Principal Office.** The principal office of the corporation shall be at such place in the City and County of Honolulu, State of Hawaii, as the Board of Directors shall from time to time determine.

Section 2. **Seal.** The corporation may have a common seal of such form and design as the Board of Directors may from time to time determine.

**ARTICLE II
Meetings**

Section 3. **Annual Meetings.** The annual meeting of the members of the corporation shall be held each year within three (3) months following the end of the fiscal year adopted by the corporation at such place in the City and County of Honolulu as shall be designated by the Board of Directors in the notice of annual meeting. The annual meeting shall be a general meeting, and at any such meeting any business within the powers of the corporation, without special notice of such business, may be transacted except as limited by law, the Charter of Incorporation, the Community Area Restrictions, or these By-Laws.

Section 4. **Special Meeting.** Special meetings of the members may be held at any time upon the call of the President, or upon the call by resolution of the Board of Directors or upon the written request of members entitled to not less than twenty-five percent (25%) of the votes of the entire membership.

Section 5. **Notices of Meetings.** Except where and to the extent otherwise required by law, the Charter of Incorporation or the Community Area Restrictions, a written notice of all meetings, annual or special, stating the place, day and hour of the meetings, and whether it is annual or special, and in case of each special meeting stating briefly the purpose thereof and the business proposed to be transacted, shall be given by personally delivering the same to a member or by mailing such notice, postage prepaid at least fourteen (14) days before the date assigned for the meeting, to a member at his address as it appears upon the records of the corporation or his usual place of business; or such notice of any meeting may be given by publication in one or more newspapers of general circulation in Honolulu, Hawaii, not less than two (2) times on separate days, the last publication to appear not less than five (5) days prior to the date assigned for the meeting. Upon notice being given in accordance with the provisions hereof, the failure of any member to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings at such meeting. The presence of any member of the corporation at a meeting shall be deemed a waiver by such member of notice of the meeting.

Section 6. **Quorum.** At all meetings the presence of members, in person or by proxy entitled to exercise twenty percent (20%) of the votes of each class of the membership shall be necessary to constitute a quorum, and the action of the members entitled to a majority of the votes present or represented at any meeting at which a quorum is present shall be valid and binding upon the corporation except as otherwise provided by law, the Charter of Incorporation, the Community Area Restrictions or these By-Laws.

Section 7. **Voting.** At each meeting of the members, each member, except where otherwise provided by the Charter of Incorporation, shall be entitled to vote in person or by representative appointed by written proxy subscribed by such member or by his duly authorized attorney, and filed with the Secretary, and he shall have the number of votes to which he is entitled under the Charter of Incorporation upon the date of said meeting or on the record date fixed by the Board of Directors. Proxies solicited by the Board of Directors shall be solicited for only one meeting at a time and shall be valid for only the meeting for which they have been solicited. As individuals, however, members of the corporation may give or solicit proxies to be effective for one or more meetings, whether annual or special, and such proxies shall be valid and recognizable in accordance with their respective terms.

Section 8. **Adjournment.** Any meeting of the members whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, and such adjournment may be to such time and to such place as may be determined by a majority vote of those present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting as originally called and noticed.

**ARTICLE III
Board of Directors**

Section 9. **Number and Term of Office.** A Board initially consisting of six (6) Directors shall be elected at the annual meeting. All Directors must be members of the corporation or representatives of members that are not persons (e.g., corporations and partnerships), provided that a representative of a non-person member who is elected as a Director shall serve as an elected individual person and may not be substituted for in his or her representative capacity. Except as hereinafter provided, each Director shall hold office until the third annual meeting held following his election and until his successor shall have been elected. At the first annual meeting, one-third (1/3rd) of the Directors elected shall be elected to three year terms, one-third (1/3rd) of the Directors elected shall be elected to two year terms, and one-third (1/3rd) of the Directors elected shall be elected to one year terms. A determination of the number of Directors who shall serve on the Board of Directors may be made by vote of the members entitled to a majority of the votes present or represented at any meeting at which a quorum is present, the notice of which meeting shall have stated that a determination of the number of Directors will be made. If the Association should decide to increase the number of Directors, within the limits set forth above, the additional number of Directors shall be elected at the next annual meeting of members. If the Association should decrease the number of Directors, the current Directors shall continue to hold office until the next annual meeting, unless certain of the Directors should earlier resign. Any increase or decrease in the number of Directors shall be accomplished so as to maintain the schedule of retiring and replacing one-third (1/3rd) of the Board of Directors each year.

Section 10. **Removal of Directors.** Any Director may be removed from office at any time and another person may be elected in his place to serve for the remainder of his term at any special meeting of members, called and held for the purpose, by the affirmative vote of the members entitled to a majority of the total votes of the membership.

Section 11. **Chairman, Meetings, Notice.** The Board may appoint a Chairman who shall preside at all meetings and serve during the pleasure of the Board. The Board shall hold meetings as often as the business of the corporation may require at the call of the President, the Chairman of the Board, or any of the Directors constituting at least one-half (1/2) of the Board, provided that the Board shall meet regularly at least once each quarter with one meeting to follow immediately after the annual meeting of the members of the corporation. The Secretary shall give notice of each meeting of the Board of Directors other than the annual meeting either orally or in writing by mailing or delivering the same not less than one (1) day before the meeting unless otherwise prescribed by the Board. The failure by the Secretary to give such notice or by any Director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of Directors is present.

Section 12. **Quorum and Adjournment.** The majority of the Directors shall constitute a quorum for the transaction of business and no actions taken other than the appointment of Directors to fill temporary vacancies, as provided in these By-Laws, shall bind the corporation unless it shall receive the concurring vote of a majority of all the Directors. In the absence of a quorum, the presiding officer or a majority of the Directors present may adjourn the meeting from time to time without further notice until a quorum be had.

Section 13. Powers of Board of Directors. The property, affairs and business of the corporation shall be managed by the Board of Directors and, except as otherwise provided by law, the Charter of Incorporation, the Community Area Restrictions or these By-Laws, all of the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors as fully and for all purposes as though exercised directly by the members; and in furtherance and not in limitation of said general powers, the Board of Directors shall have the power: to authorize the disposition of property; to authorize, in accordance with Section 5.06 of the Community Area Restrictions, borrowings not to exceed TEN THOUSAND DOLLARS (\$10,000.00) which the Board deems necessary or advisable to meet unforeseen, unexpected or current expenses and obligations of the Association for which there are insufficient operating funds or reserves; to appoint a General Manager and such other managers, officers or agents of the corporation as in its judgment the business may require and to confer upon and to delegate to them by power of attorney or otherwise such power and authority as it shall determine; to fix the salaries or compensation of agents and employees of the corporation and, in its discretion, to require security of any of them for the faithful performance of any of their duties; to adopt, amend and repeal rules and regulations, not inconsistent with law, the Charter of Incorporation, the Community Area Restrictions or these By-Laws, in accordance with Section 5.06 of the Community Area Restrictions, for the purpose of regulating the use and enjoyment of the common areas, improvements, facilities and services and the personal conduct of members and their tenants and guests thereon; to establish by the aforementioned rules and regulations penalties for violations of same and/or the Community Area Restrictions and for non-payment of authorized charges and assessments made by the corporation, including the suspension of a member's right to vote; to create such committees (including an executive committee or committees) and to designate as members of such committees such persons as it shall determine, and to confer upon such committees such power and authority as may by resolution be set forth for the purpose of carrying on or exercising any of the powers of the corporation; to appoint members of the Design Committee who are to be appointed by the corporation pursuant to the Community Area Restrictions; to create and set aside contingency reserve funds not to exceed fifty percent (50%) of the estimated operating expenses for the forthcoming year and to deposit said funds in such depository institution it may deem proper; to remove or suspend any officer and, generally, to do any and every lawful act necessary or proper to carry into effect the powers, purposes and objects of the corporation.

Section 14. Vacancies and Substitute Directors. If any permanent vacancy shall occur in the Board of Directors through death, resignation, removal or other cause, the remaining Directors, by affirmative vote of a majority of the whole Board may elect a successor Director to hold office until the next regular or special meeting of the Association at which time the vacancy shall be filled by election by the members of the Association.

In cases of a temporary vacancy, due to the absence of any Director from the State of Hawaii or the sickness or disability of any Director, the remaining Directors, whether constituting a majority or a minority of the whole Board, may appoint some person as a substitute Director who shall be a Director during such absence or disability and until such Director returns to duty. The determination by the Board of Directors of the fact of such absence or disability and the duration thereof, as shown on the minutes of the Board meeting, shall be conclusive as to all persons and the corporation.

Section 15. Compensation. The members of the Board of Directors shall serve without compensation but shall be entitled to be reimbursed for reasonable expenses incurred in attending meetings of the Board not to exceed TEN DOLLARS (\$10.00) for each meeting attended.

Section 16. Approval of Acts of Board of Directors. At any annual or special meeting of the members any or all of the acts and doings of the Board of Directors may be ratified, confirmed and approved by the members, and such ratification and approval shall be as valid and binding upon the corporation and upon all members as though it had been approved or ratified by every member of the corporation.

ARTICLE IV

Officers

Section 17. Appointment. The officers of the corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer and in addition thereto, at the discretion of the Board of Directors, a Chairman of the Board, an Assistant Treasurer or Assistant Treasurers, an Assistant Secretary or Assistant Secretaries, and such other subordinate officers with such duties as the Board of Directors shall from time to time determine. All officers shall be appointed annually by the Board of Directors and shall serve until their successors have been appointed and qualified. One person may hold more than one office, and all officers shall be subject to removal at any time by the affirmative vote of the majority of the entire Board. The Board of Directors may, in its discretion, appoint acting or temporary officers, may appoint officers to fill vacancies occurring for any reason whatsoever, and may, in its discretion, limit or enlarge the duties and powers of any officer appointed by it.

Section 18. Chairman of the Board. The Chairman of the Board, if appointed, shall preside at all meetings of the Board of Directors and shall perform such other duties as may be required of him by the Board of Directors.

Section 19. The President. The President shall preside at all meetings of the members; and in case no Chairman of the Board of Directors is appointed or in the absence of such a Chairman if appointed, he shall preside at meetings of the Board of Directors. He shall exercise general supervision over the business of the corporation and over its several officers, agents and employees, subject, however, to the control of the Board of Directors. He shall also perform Design Committee functions when called upon to do so pursuant to Section 4.01 of the Community Area Restrictions.

Section 20. Vice Presidents. The Vice President or Vice Presidents, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers and rights of the President provided for in these By-Laws or otherwise during the absence or disability of the President or whenever the office of President is vacant, and shall perform all other duties assigned by the Board of Directors.

Section 21. The Treasurer. The Treasurer shall have custody of all the funds, notes, bonds and other valuable papers of the corporation, and shall be responsible for keeping all of the books and accounts of the corporation, and shall render statements thereof in such form and as often as required by the Board of Directors. He shall have the power to enclose for deposit or collection all notes, drafts, checks and other obligations for the payment of money to the corporation or to its order. The Treasurer shall also be responsible for obtaining an annual audit of the corporation's books by an independent certified public accountant and shall be responsible for preparing an annual budget for the corporation. The Treasurer shall see that the books and accounts of the corporation shall be available at all times during usual business hours for examination by members of the corporation at the principal office of the corporation.

Section 22. The Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members. He shall give notice in conformity with these By-Laws of all meetings of the members and the Board of Directors. In the absence of the President and the Vice Presidents, he shall preside until a Chairman pro tempore is chosen. He shall have charge of the membership ledger, all documents pertaining to title to all real property owned or held by the corporation and all rules, regulations and other documents and maps required to be filed with the corporation or in the office of the corporation by the Community Area Restrictions, including the Declaration and Charter of Incorporation and By-Laws, an original or duplicate of each of which shall be available at all times during usual business hours for examination by members of the corporation at the principal office of the corporation. He shall also perform all other duties assigned to him by the President or the Board of Directors.

Section 23. Assistant Treasurer. The Assistant Treasurer or Assistant Treasurers, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all of the powers of the Treasurer during his absence or disability or whenever the office of Treasurer is vacant, and shall perform all duties assigned to him or them by the President or the Board of Directors.

Section 24. Assistant Secretary. The Assistant Secretary or Assistant Secretaries, if appointed, in the order of priority of appointment, shall perform all of the duties and exercise all the powers of the Secretary during his absence or disability or whenever the office of Secretary is vacant, and shall perform all duties assigned to him or them by the President or the Board of Directors.

ARTICLE V

Execution of Instruments

Section 25. **Proper Officers.** Except as otherwise provided by law or these By-Laws, all checks, drafts, notes, bonds acceptances, deeds, leases, contracts and all other documents and instruments, shall be signed, executed and delivered by the President or a Vice President and by the Treasurer or the Secretary, or an Assistant Treasurer or Assistant Secretary; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officers, agents or employees of the corporation, or any one of them, in such manner as may be determined by the Board of Directors.

Section 26. **Facsimile Signature.** The Board of Directors may from time to time by resolution provide for the execution of any corporate instrument or document by a mechanical device or machine, or by use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board of Directors.

ARTICLE VI

Section 27. **Adoption, Amendment and Repeal.** The By-Laws may be amended or repealed and new By-Laws may be adopted, by the affirmative vote of the members entitled to a majority of the votes entitled to be cast in each class of the membership who are present or represented at a meeting of the Association at which a quorum is present, the notice of which meeting shall have stated as a purpose the proposed amendment, repeal or adoption of By-Laws.

ADOPTION OF BY-LAWS

The undersigned, being all of the signers of the Petition for Charter of Incorporation of EWA BY GENTRY COMMUNITY ASSOCIATION do hereby adopt the foregoing By-Laws as the By-Laws of said corporation.

DATED: Honolulu, Hawaii, August 2, 1988 .

/s/ Harvey Jay Migdal