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STATE OF HAWAII  
LAND COURT

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ASSISTANT REGISTRAR  
NOTED ON DEATH DATE 07/25/20276  
BOOK PAGE

07/25/20276

SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS

(LOTS 24 THROUGH 40 AND 42 THROUGH 56, MAP 8 LAND COURT

APPLICATION NO. 1683)

As filed in the Office of the  
Assistant Registrar of the Land  
Court of the State of Hawaii as  
Document No. \_\_\_\_\_.

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WHEREAS, KALUA KOI CORPORATION, a Hawaii corporation, hereinafter referred to as "Declarant", and KAPUHI PARTNERSHIP, a Hawaii partnership, did execute a certain Declaration of Covenants and Restrictions dated October 1, 1976, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 784612 and noted on Transfer Certificate of Title No. 181,964, hereinafter referred to as the "West Molokai Protective Covenants", covering certain parcels of land situated at Kaluakoi and Iloli, Island of Molokai, County of Maui, State of Hawaii, which together with future annexations is to be known as "West Molokai"; and

WHEREAS, Declarant is the fee owner of a certain parcel of land situated at Kaluakoi and Iloli, Island of Molokai, County of Maui, State of Hawaii, which has been subdivided into 35 lots as shown on Map 8, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1683, being a portion of the land described in Transfer Certificates of Title Nos. 207275 and 207276; and

WHEREAS, Declarant desires to make and record this Declaration annexing Lots 24 through 40 and 42 through 56, as shown on Map 8 of Application No. 1683, to West Molokai as

hereinafter set forth (such Lots 24 through 40 and 42 through 56, shall constitute the "Moana Makani" subdivision, hereinafter referred to as "Moana Makani");

NOW, THEREFORE, pursuant to the provisions of Article II of the West Molokai Protective Covenants, Declarant does hereby declare that Moana Makani shall be, and hereby is, annexed to West Molokai, and that Moana Makani is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the West Molokai Protective Covenants, but with the following special provisions and restrictions applicable to Moana Makani which are in addition to and not in derogation of any covenants and restrictions contained in the West Molokai Protective Covenants, except to the extent herein set forth:

1. Each lot within Moana Makani is hereby designated a Single Family Residential/Agricultural Lot, as hereinafter defined.

2. "Single Family Residential/Agricultural Lot" shall mean any lot zoned for agricultural use and intended to be used for single family residential and agricultural purposes, and which shall be governed and restricted in the same manner and to the same extent as a "Single Family Residential Lot" and an "Agricultural Lot" are governed and restricted under the West Molokai Protective Covenants, except as set forth herein. Each lot in Moana Makani may be used for any purpose and in any manner which either a Single Family Residential Lot or an Agricultural Lot may be used under the West Molokai Protective Covenants, except as set forth herein.

3. Notwithstanding Section 3.01(a)(26) of Article III of the West Molokai Protective Covenants, no lot in Moana Makani shall be subdivided or caused to be subdivided within a period of ten (10) years from the date of this Supplemental Declaration. Upon the expiration of such 10-year period, any lot or lots in Moana Makani may be subdivided in such manner as Declarant shall approve in writing, which approval shall not be unreasonably withheld.

4. Each lot in Moana Makani shall be limited to the installation and use of not more than one (1) domestic water tap not to exceed three-fourths inch (3/4") in diameter size. All water shall be used primarily for reasonable domestic purposes, including watering of normal residential landscaping, and shall not be used for any irrigation of crops or raising of livestock on a commercial or other large-scale basis. All Owners of lots in Moana Makani shall pay, when due, their pro rata share of all water charges assessed by Declarant or any private water company established to serve Moana Makani or any governmental agency to which any water system serving Moana Makani may be dedicated.

5. Except as set forth in paragraph 8 of this Supplemental Declaration, no lot in Moana Makani may be used for any commercial purpose whatsoever.

6. In addition to the requirements and restrictions imposed under Section 3.02 of Article III of the West Molokai Protective Covenants, each residential home constructed, erected or placed on any lot in Moana Makani, exclusive of the cost of any outbuildings, storage facilities or other accessory structures constructed, erected or placed on such lot, shall

have a construction cost of not less than sixty-five thousand dollars (\$65,000.00), and shall comprise a total floor area of not less than one-thousand two-hundred (1,200) square feet, when measured from the insides of the perimeter walls.

7. All outbuildings, storage facilities and other accessory structures constructed, erected or placed on any lot in Moana Makani shall be of sound and quality construction and aesthetically compatible with all other structures and improvements on such lot, and shall comply with the provisions of Section 3.02 of Article III of the West Molokai Protective Covenants.

8. Notwithstanding anything to the contrary contained in this Supplemental Declaration and the West Molokai Protective Covenants, including particularly, but not limited to, Sections 3.01(a) and 3.03 of the West Molokai Protective Covenants, the following lots in Moana Makani, in addition to the uses permitted by this Supplemental Declaration and the West Molokai Protective Covenants, shall be permitted to be used and engaged in and for the following manner and purposes:

(a) Lot 42: the establishment, operation and maintenance of (i) radio transmission and broadcasting facilities and activities of all types; (ii) transmission towers, equipment and facilities, and (iii) all related communication and broadcasting operations, activities, services, equipment and facilities.

(b) Lot 43: (i) the establishment, operation and maintenance of horse stables and equestrian schools, centers

and facilities of all types; (ii) the purchasing, raising and selling of horses, and (iii) all related activities, occupations and facilities.

(c) Lot 51: the establishment, operation and maintenance of airport runways and facilities and all related or customary commercial and/or passenger servicing facilities, establishments and activities (including, but not limited to, public restaurants and car rental agencies).

Except for the uses described above, each such lot shall in all other respects be held, sold, conveyed, encumbered, leased, occupied and improved by the limitations, restrictions, covenants and conditions set forth in this Supplemental Declaration; PROVIDED, HOWEVER, that Lots 43 and 51 shall not be bound, limited and restricted by the provisions contained in paragraph 4 of this Supplemental Declaration for so long as, and only to the extent that, such lots are used in the manner and for the purposes described in this paragraph 8.

9. Lots 25, 31, 37, 47, 49 and 53 of Moana Makani shall be designated as "flag lots". The construction and maintenance of any roadway on any flag lot shall be upon the following terms and conditions:

No portion of any such roadway shall be constructed or encroach upon the lands of any lot adjacent to a flag lot; PROVIDED, HOWEVER, that the Owner of a flag lot and his successors and assigns (such Owner, his successors and assigns being hereinafter referred to as the "Licensee") shall have, and is hereby granted, a license to enter upon and cut, fill and change the topography of any lot located immediately

adjacent to his lot in such reasonable manner and at such reasonable times as may be necessary to complete the construction of or properly maintain such roadway on the flag lot. No cuts, fills or other changes in the topography of any adjacent lot made by the Licensee shall extend beyond or encroach upon the boundary line of such adjacent lot by more than twenty (20) feet, and all such cuts, fills and other changes shall be limited to that necessary for the proper and reasonable construction and maintenance of such roadway, and shall not in any manner materially detract from or adversely affect the appearance or value of any such adjacent lot. Each entrance upon an adjacent lot shall be preceded by giving oral or written notice to the Owner of such adjacent lot (such Owner being hereinafter referred to as the "Licensor") of such entrance. The construction and maintenance of any roadway shall at all times proceed in a reasonable and expeditious manner and with due diligence, and shall not, without the prior written consent of the Licensor, result in the destruction, removal or alteration of any building or improvement located upon or landscaping of any adjacent lot. The Licensee shall indemnify, defend and save harmless the Licensor from and against any liability for loss or damage to property, real or personal, and injury to or death of any person arising out of the license hereby granted, except where such property damage or personal injury or death is caused in whole or in part by the Licensor.

10. Each lot in Moana Makani, where applicable, shall have a 150-foot building setback line along Kepuhi Road and Maunaloa Highway, as shown on Map 8 filed in the Office of

the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1683; PROVIDED, HOWEVER, that the Owner of any such lot may, upon obtaining the prior approval of the West Molokai Design Committee, erect and maintain a fence within such 150-foot building setback line.

11. No overhead or above-ground utility lines of any description shall be installed or maintained, or caused to be installed or maintained, on any lot in Moana Makani; PROVIDED, HOWEVER, that this paragraph 10 shall not apply to Lot 42 for so long as, and only to the extent that, such Lot is used in the manner and for the purposes described in paragraph 8 of this Supplemental Declaration.

12. An Owner of a Single Family Residential/Agricultural Lot shall have one (1) vote in the West Molokai Association for each lot so owned and shall have all the voting rights of a Class A member as set forth in Section 5.03 of Article V of the West Molokai Restrictive Covenants and the By-laws of West Molokai Association.

Any land classification or use restriction affecting any lot or lots in Moana Makani, or any subdivided portion thereof, may be amended or repealed by the filing of a further supplemental declaration setting forth such changes and signed by the Owner or Owners of such lot or lots and Declarant, as provided in Section 3.06(b) of Article III of the West Molokai Protective Covenants.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision hereof. This



Supplemental Declaration shall continue and remain in full force and effect until such time as the West Molokai Protective Covenants is terminated under Section 8.01 of Article VIII of said Covenants.

IN WITNESS WHEREOF, Declarant has executed these presents this 31st day of January, 1979.

KALUA KOI CORPORATION

By *Sam R. Cyee*  
Its Executive Vice-President

By *Phillip Boyd*  
Its President

