

COMMUNITY CHARTER

FOR

KAI AULU 'O KAKA 'AKO

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COMMUNITY CHARTER FOR KAIAULU 'O KAKA'AKO

PREAMBLE

"**Kaka'ako**" is a developed, urban area within the City and County of Honolulu, Hawai'i, which has been designated as a Community Development District pursuant to Hawai'i law, and is comprised of the "Kaka'ako Makai Area" and the "Kaka'ako Mauka Area." This Community Charter for Kaiaulu 'o Kaka'ako ("**Charter**") establishes a governance structure and a flexible system of standards and procedures for the overall redevelopment, expansion, administration, and maintenance of that portion of the Kaka'ako Mauka Area referred to herein as "**Kaiaulu 'o Kaka'ako**." The Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("**Kamehameha Schools**") is the developer of Kaiaulu 'o Kaka'ako and, along with its successors in trust and assigns, is referred to in this Charter as the "**Founder**."

The Founder's plan for redevelopment of Kaiaulu 'o Kaka'ako is described in and subject to (a) the Master Plan Permit (September 2009) issued by the Hawaii Community Development Authority ("**HCDA**") pursuant to the Mauka Area Rules for the Kaka'ako Community Development District, (b) the Master Plan Development Agreement by and between HCDA and Kamehameha Schools, dated October 6, 2009, (c) the Kaiaulu 'o Kaka'ako Master Plan, and (d) development plans established pursuant thereto (collectively, as each may be supplemented, amended, or extended from time to time, or replaced upon expiration or termination, the "**Master Plan**"). The Master Plan may include a mix of integrated and complementary uses within a planned, new urbanism environment, including, without limitation, residential, office, retail, industrial, and parking uses. This Charter is intended to establish a process for achieving the goals set out in the Master Plan and establishes relationships and obligations between and among owners, uses, and the various parcels within Kaka'ako.

The Kaiaulu 'o Kaka'ako Owners Association, Inc. (the "**Association**"), a Hawai'i nonprofit corporation, shall operate and/or maintain various common areas and community improvements within Kaiaulu 'o Kaka'ako and is empowered to administer and enforce this Charter and the other Governing Documents referenced in this Charter. All owners of parcels which are made subject to this Charter shall be members of the Association.

The current Master Plan encompasses all of the property described in Exhibit "A" to this Charter and all of the property described in Exhibit "B," all of which is located within the Kaka'ako Mauka Area. The Founder is not obligated to submit to this Charter all of the property described in Exhibit "B" and certain properties included in Exhibit "B" or hereafter covered by the Master Plan may not be subject to this Charter. In addition, the Founder may submit property to this Charter that is not described in Exhibit "B."

DECLARATION OF COVENANT

Kamehameha Schools, by executing and recording this Charter, declares that the property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement, shall constitute "**Kaiaulu 'o Kaka'ako**" or the "**Community**," as referred to in this Charter and shall be subject to the terms of this Charter. This Charter shall run with the title to all such property, shall govern the development and use of such property, and shall be binding upon the Founder; the owners of any portion of such property; any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property; and their respective heirs, successors, successors-in-title, and assigns. This Charter shall also be binding upon the Kaiaulu 'o Kaka'ako Owners Association, Inc., its successors and assigns.

This document does not and is not intended to create a condominium under the laws of the State of Hawaii.

PART ONE: INTRODUCTION TO THE COMMUNITY

Chapter 1

Governing Documents

Kaiaulu 'o Kaka'ako shall be guided and governed by certain governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

1.1. Scope and Applicability

Kaiaulu 'o Kaka'ako is administered through various documents that have a legal and binding effect on all owners and occupants of property that is subject to this Charter, as well as on any-

GOVERNING DOCUMENTS	
Charter: (recorded)	this Community Charter for Kaiaulu 'o Kaka'ako, which creates obligations that are binding upon the Association and all present and future owners of property in the Community
Supplement: (recorded)	a recorded Supplement to this Charter (which may take any form or be denominated in any manner (<i>e.g.</i> , a recorded supplement, plat, deed restriction, easement, etc.)), which may submit a portion of the Additional Property (as defined in Section 2.1) to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Service Areas as described in Chapter 3, or any of the foregoing
Articles of Incorporation: (filed with the State of Hawai'i Department of Commerce and Consumer Affairs)	the Articles of Incorporation of the Kaiaulu 'o Kaka'ako Owners Association, Inc., which establishes the Association as a nonprofit corporation under Hawai'i law
By-Laws: (attached and recorded with this Charter as Exhibit "E")	the By-Laws of the Kaiaulu 'o Kaka'ako Owners Association, Inc., adopted by its Board of Directors, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "E."
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, which govern new construction and modifications, including structures, landscaping, and other improvements on a Parcel (as defined in Section 3.1)
Rules: (initial set attached and recorded within this Charter as Exhibit "C")	the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Kaiaulu 'o Kaka'ako
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property which the Association owns, maintains, or controls

Table 1.1 Governing Documents

Governing Documents

one else that now or in the future has an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "**Governing Documents**," include the documents described in Table 1.1, each as may be amended. All Parcel Owners and Sub-Unit Owners (each as defined in Section 2.4), as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

1.2. Additional Covenants

The owner of any property within Kaiaulu 'o Kaka'ako may impose additional covenants on its property with the Founder's approval as required pursuant to Section 19.5. In such case, as between this Charter and any such additional covenants, the more restrictive provisions control. If given such authority in the instrument setting forth such covenants, the Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts

If there are conflicts between any of the Governing Documents and Hawai'i law (including the applicable Mauka Area Rules and the Master Plan), Hawai'i law shall control. If there are conflicts between or among any of the Governing Documents, then this Charter, the Articles, and the By-Laws (in that order) shall control. If there are conflicts between the Governing Documents and any covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants) previous to the recording of this Charter, the previously recorded covenants shall control unless specifically made subordinate to the Governing Documents. If there are conflicts between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants) following the recording of this Charter, the Governing Documents shall control.

The Governing Documents use italicized summaries at the beginning of each Chapter. In addition, diagrams and tables are used to illustrate concepts and assist the reader. **If there be a conflict between any italicized summary, diagram, or table and the text of the Governing Documents, the text shall control.**

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

The defined terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms follows the Table of Contents. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

1.5. Interpretation of Certain References

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Governing Documents

Person. References in the Governing Documents to a "**Person**" or "**Persons**" shall mean an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "**recorded**" legal instrument, or to "**recordation**" or the "**recording**" of a legal instrument, shall mean an instrument recorded or the recording of a legal instrument in the official records of the Bureau of Conveyances of the State of Hawai'i or such other place designated as the official location for recording or filing documents affecting title to real estate in order to make them a matter of public record.

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the higher of: (a) the standard of use and operations, conduct, maintenance, and appearance generally prevailing in the Community, or (b) the minimum standards described in the applicable Mauka Area Rules, Master Plan, this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Kaiaulu 'o Kaka'ako matures.

Maintenance. All references in this Charter to "**maintenance**" shall refer to maintenance, repair, and, except as otherwise specifically conditioned in this Charter, replacement.

Notice. All references in this Charter to "**notice**" or "**notify**" or any derivative of such terms shall be deemed to refer to written notice by personal delivery, United States mail, private carri-

er, or, with written confirmation of transmission, by facsimile or electronic mail.

Notices shall be deemed to have been duly given and effective:

(a) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(c) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

Chapter 2

Community Administration

The Founder, the Association, and the Parcel Owners all have a role in the functioning of Kaiaulu 'o Kaka'ako and in helping to fulfill the vision and goals for the Community. This chapter identifies those parties and describes their roles in administering Kaiaulu 'o Kaka'ako.

2.1. The Founder

The Founder, as the developer of Kaiaulu 'o Kaka'ako, has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the development and operation of the Community.

The Founder has reserved various rights for itself in the Governing Documents with respect to development and administration of Kaiaulu 'o Kaka'ako, including the right to submit additional property to this Charter, to appoint a majority of the members of the Association's board of directors ("**Board**"), and those rights set forth in Chapters 18 and 19. The Founder may exercise these rights during the "**Development and Sale Period.**"

The Development and Sale Period continues until such time as all Parcels planned for development or redevelopment as part of Kaiaulu 'o Kaka'ako have been redeveloped pursuant to the Master Plan with structures for which a certificate of occupancy has been issued and, in any event, shall continue for so long as the Founder or any "Founder Affiliate" owns real property in Kaiaulu 'o Kaka'ako for development and sale or has an unexpired option to expand the Community pursuant to Chapter 18. Notwithstanding the above, the Founder, in a recorded instrument, may terminate any or all of its rights prior to the termination of the Development and Sale Period.

A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is owned by, or is an owner, a member, a partner, a joint venture partner, or a shareholder of, the Founder.

During the "**Founder Control Period**," the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). The Founder Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 90% of the total number of Parcels permitted by applicable zoning for the property described in the Master Plan have been conveyed to Persons other than the Founder, Founder Affiliates, or Parcel Developers holding title for purposes of development, redevelopment, construction, and/or resale;

(b) December 31, 2060; or

(c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

A "**Parcel Developer**" is any Person who purchases a Parcel for development or redevelopment and resale in the ordinary course of its business. For purposes of determining the Founder Control Period, a Parcel Developer shall be deemed to hold title to a Parcel for so long as it continues to own any portion of the Parcel for purposes of development, redevelopment, construction, and/or resale.

The Founder may assign its status as the Founder under the Governing Documents, any Founder rights, and any obligations of the Founder to any person who takes title to any portion of

Community Administration

Kaiaulu 'o Kaka'ako or any property described in Exhibit "B" attached hereto (the "**Additional Property**"). Such assignment shall be made only in an instrument signed by both the assigning Founder and the assignee.

Notwithstanding the expiration of the Development and Sale Period or the assignment or expiration of Founder rights or status, Kamehameha Schools shall retain certain rights and authority in perpetuity as provided specifically in Section 19.10.

2.2. The Association

The Association is the entity primarily responsible for managing and administering Kaiaulu 'o Kaka'ako in accordance with the Governing Documents. The Association may exercise all rights and powers which the Governing Documents and Hawai'i law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.3. The Board

On most matters, the Association acts through the Board and the Board may exercise the Association's rights and powers without a vote of the membership. However, in some instances the Governing Documents or applicable laws limit the Board's ability to act without the approval of Association members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards of conduct set forth in the By-Laws.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation,

binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, as defined in Section 3.1, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its Members.

2.4. The Parcel Owners

Except as provided below with respect to Sub-Units and Parcel Associations, each Person that holds record title to a Parcel (or is a lessee under a ground lease as described below) is referred to in the Governing Documents as a "**Parcel Owner**." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered a "Parcel Owner." If a Parcel is subject to a long-term ground lease, and the ground lease specifically so states, the ground lessee (rather than the holder of fee simple title) will be considered the Parcel Owner. If a Parcel has more than one Parcel Owner, each co-Owner is jointly and severally obligated to perform the responsibilities of the Parcel Owner under the Governing Documents.

Every Parcel Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Charter.

One or more Parcels within Kaiaulu 'o Kaka'ako may include Sub-Units (defined in Section 3.1) for which a separate condominium or other owners association is formed to administer additional covenants applicable to that particular development. Any such condominium or other owners association is referred to in this Charter as a "**Parcel Association**;" provided, in the case of a Parcel which is governed by a master condominium or other owners association containing one or more subordinate sub-associations,

Community Administration

the master condominium or owners association for the Parcel, and not the sub-association(s), shall be the Parcel Association with respect to such Parcel.

Unless otherwise provided in the Governing Documents, if a Parcel Association is formed for a Parcel, the Parcel Association (i) shall act on behalf of the owners of Sub-Units ("**Sub-Unit Owners**") within the Parcel, (ii) shall be deemed the Parcel Owner for such Parcel for all purposes under this Charter, and (iii) shall be the member of the Association with respect to such Parcel. Sub-Unit Owners shall *not* be Parcel Owners under this Charter and are *not* members of the Association.

References to votes by Sub-Unit Owners in the Governing Documents shall not be deemed to confer direct voting rights to Sub-Unit Owners; Sub-Unit Owners shall have the right to cast votes only as otherwise specifically provided in the Governing Documents.

Chapter 3

Community Structure and Organization

Kaiaulu 'o Kaka'ako consists of Parcels intended for operation and control by individual Parcel Owners, as well as property that the Association operates and controls and that is intended for common use by all Parcel Owners and the members of the general public. Parcels may be assigned to Service Areas to permit the Association to provide special services and benefits to particular Parcels within the Community.

3.1. Property Designations Within the Community

Parcels. A "Parcel" is a portion of Kaiaulu 'o Kaka'ako, whether improved or unimproved, which may be independently owned and conveyed and is intended for development, use, and occupancy in a manner consistent with the Master Plan; provided, Common Area and property dedicated to the public shall not be Parcels. A Parcel shall include the land or air space that is part of the Parcel as well as any improvements thereon.

With respect to any portion of Kaiaulu 'o Kaka'ako that is governed by a Parcel Association, the term Parcel refers collectively to all units and any common area or common elements subject to such Parcel Association. The term Parcel shall not refer to an individual condominium or other independently conveyable dwelling unit ("**Sub-Units**") subject to a Parcel Association.

Reserved Housing Units. Certain Parcels or Sub-Units have been or shall be designated as "**Reserved Housing Units.**" Reserved Housing Units are occupied or reserved for occupancy by Persons meeting criteria set forth in the Master Plan and Hawai'i law with respect to household income and net worth. Owners or occupants of Reserved Housing Units may be afforded benefits or opportunities under the Governing

Documents which are not otherwise provided to all Parcel Owners or occupants.

Common Area. The "**Common Area**" includes any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Parcel. The Common Area also includes any property that the Association holds under a lease.

Area of Common Responsibility. The phrase "**Area of Common Responsibility**" refers, collectively, to any properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, regardless of who owns them. The Area of Common Responsibility includes any Common Area and may also include portions of Parcels, woonefs, open space and parks, and property dedicated to the public, such as public rights-of-way, as further described in Section 11.1.

3.2. Service Areas

Parcels or Sub-Units or uses within one or more Parcels may also be part of one or more "**Service Areas**" in which particular Parcels or uses receive benefits or services from the Association that the Association does not provide to all Parcels within the Community. For example, and without limitation, a Service Area may be created for:

- similarly situated Parcels, Sub-Units, or uses which receive maintenance services that are not provided to other Parcels, Sub-Units, or uses;

Community Structure and Organization

- particular Parcels, Sub-Units, or uses that share the use of parking facilities which are not available to all Parcel Owners, Sub-Unit Owners, or occupants; and/or
- non-residential uses which receive or benefit from services the Association provides that do not similarly benefit residential uses.

A Parcel, Sub-Unit, or use may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Parcels, Sub-Units, or uses that are not contiguous.

The Founder may designate Service Areas (by name or other identifying designation) and assign Parcels, Sub-Units, or uses to a particular Service Area in a Supplement. The Founder may record such a Supplement without the consent of any Person except the owner(s) of the property being made part of the Service Area, if not the Founder. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries, subject to existing service contracts between the Association and service vendors, and subject to the consent of the owner(s) of any property being added to or removed from the Service Area by such amendment.

In addition, the Board may, by resolution, designate Service Areas and assign Parcels and/or Sub-Units to them upon petition of the Parcel Owners and/or Sub-Unit Owners affected by the proposed designation pursuant to Section 12.2.

The Parcel Owners of Parcels and the Sub-Unit Owners of Sub-Units within each Service Area may elect a "**Service Area Committee**" in accordance with the By-Laws to represent and act on behalf of the Service Area with respect to the services and benefits that the Association provides to the Service Area.

Chapter 4

Association Membership and Voting Rights

The Association is the entity through which each Parcel Owner participates in the governance and administration of Kaiyaulu 'o Kaka'ako. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Parcel Owners allow the Parcel Owners to participate in administration of the Community and influence major decisions.

4.1. Membership

Every Parcel Owner is automatically a "**Member**" of the Association. The Association initially has two classes of members: "**Owner Members**," which are all Parcel Owners (other than the Founder and Founder Affiliates for so long as there is a Founder Membership), and the "**Founder Member**," which is the Founder.

There shall be only one membership per Parcel. If more than one Person is the Parcel Owner, all co-Parcel Owners shall share the privileges of such membership. The exercise of membership privileges is subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws.

If a Parcel Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Parcel Owner designates from time to time in writing to the Association's Secretary.

Notwithstanding the above, all co-Owners of a Parcel are jointly and severally obligated to perform the responsibilities of a Member.

The Founder holds the sole **Founder Membership**. The Founder Membership shall terminate two years following the termination of the

Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

4.2. Voting

Each Parcel and each Sub-Unit shall be allocated the number of votes corresponding to the number of "**Equivalent Units**" assigned to the Parcel in accordance with the formula set forth in Exhibit "D," subject to any limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any Parcel exempt from assessment under Section 14.8. Further, during the period of the Founder Membership, no vote shall be exercised for Parcels that the Founder or any Founder Affiliate owns for purposes of development, redevelopment, construction, and/or resale; rather, the Founder's consent shall be required for actions of the Board, the membership, and committees, as specifically provided in the Governing Documents. Upon termination of the Founder Membership, the Founder and Founder Affiliates shall be Owner Members entitled to the number of votes corresponding to the number of Equivalent Units assigned to each Parcel they own.

Parcel Owners may exercise voting rights as set forth in the By-Laws. If there is more than one Person is the Parcel Owner, the vote for such Parcel shall be exercised as the co-Parcel Owners holding a majority of the ownership interest in the Parcel determine among themselves. Any co-Parcel Owner may cast the vote for the Parcel and majority agreement shall be conclusively presumed unless another co-Parcel Owner of the Parcel protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement,

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the Parcel's vote shall be suspended if two or more co-Parcel Owners seek to exercise it independently and inconsistently. Sub-Unit Owners shall not be considered co-Parcel Owners under this Charter.

With respect to any Parcel containing Sub-Units, if all of the Sub-Units within the Parcel have the same Land Use Classification under Exhibit "D" (*e.g.*, Sub-Units within a residential condominium), then the votes for such Parcel shall be exercised by the board of directors of the Parcel Association for the Parcel in accordance with the Parcel Association's governing document or, in the absence of provisions addressing the same, as the Parcel Association's directors determine among themselves. If different Sub-Units within the Parcel have different Land Use Classifications (*e.g.*, a Parcel may contain residential Sub-Units and retail Sub-Units), on any matter calling for a vote of the Parcel Owners, the board of directors of the Parcel Association shall cast a block vote for the Sub-Unit Owners of each Land Use Classification within its Parcel in accordance with the Parcel Association's governing documents or, in the absence of provisions addressing the same, the board of directors of the Parcel Association shall poll the Sub-Unit Owners of each Land Use Classification within its Parcel and cast a block vote for such Sub-Units in accordance with the direction of the majority of the poll respondents.

PART TWO: COMMUNITY STANDARDS

Chapter 5

Architecture, Landscaping, and Aesthetic Standards

All Parcel Owners are required to uphold minimum design, landscaping, and general appearance standards with respect to their Parcels. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Parcels.

5.1. General

(a) Improvements; Approval Required.

All site work, structures, improvements, landscaping, signage, and other items placed on any portion of a Parcel in a manner or location visible from outside of any structures (collectively, "**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter.

No approval is necessary to rebuild or restore damaged structures in a manner consistent with the plans and specifications most recently approved for such structures or to do work that does not cause material change to the exterior appearance of the structure. Generally, no approval is required for work done to the interior of any structure; however, interior modifications to a structure that materially change the exterior appearance of the structure do require prior approval.

(b) Application to Commercial Uses. Each Parcel Owner acknowledges and understands there will be multiple commercial uses within the Kaiaulu 'o Kaka'ako that will result in on-going visible changes to the exterior of structures and to the signage, lighting, window displays, and storefronts associated with such uses. It is not the

intent of this chapter to prohibit or unduly regulate or burden the process of effectuating such changes or to require a particular appearance. Rather, the purpose of this chapter, as applied to commercial uses, is to ensure that such changes are compatible with the Community-Wide Standard and the Design Guidelines. The approval or disapproval of any Improvements solely for the purpose of accommodating commercial uses shall be based solely upon such considerations.

(c) Governmental Approvals. Approval under this chapter is not a substitute for, shall apply in addition to, and shall be a prerequisite to any approvals or reviews required by the City and County of Honolulu, HCDA, or any other governmental agency or entity having jurisdiction over architectural or construction matters. Approval under this chapter is required prior to seeking governmental approval for the construction, reconstruction, or renovation of Improvements on a Parcel or for governmental approval of a variance from applicable zoning or other design or construction requirements relating to a Parcel.

(d) Licensed Professionals Required. Any Improvement on a Parcel for which a governmental permit or other approval is required shall be designed by and built in accordance with the plans and specifications of a licensed architect or engineer.

(e) Application to the Founder. This chapter shall not apply to the Founder's, Founder Affiliates, or the Association's design and construction activities during the Founder Control Period.

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(f) Application to Adaptive Re-Use. Kaiaulu 'o Kaka'ako is a redevelopment of an urban area, containing existing structures housing a multitude of diverse uses, and the temporary retention, use, and re-use of such existing structures is expected. Any alteration of an existing structure which retains the structure, but makes material alterations to allow/add up to 25% new floor area is referred to in this Charter as an "**adaptive re-use**." This chapter shall not apply to the adaptive re-use of any structure, and the Founder shall have the sole and full authority to determine whether improvements or alterations to an existing structure constitute an adaptive re-use. The Founder's determinations in this regard shall be final, binding, and conclusive upon the Reviewer, the Association, Parcel Owners, and Sub-Unit Owners.

5.2. Design Review Authority



Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board will appoint a Design Advisory Board to review applications for proposed improvements. The Founder or the Design Advisory Board is referred to as the "Reviewer."

(a) The Founder. The Founder shall have exclusive authority to review and act upon all applications for design review of proposed Improvements until the expiration of the Development and Sale Period.

The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for design approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such

delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines, solely in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) Design Advisory Board. Upon the Founder's delegation of authority or upon expiration or termination of the Founder's rights under Section 5.2(a), the Board shall appoint a Design Advisory Board ("**Design Advisory Board**" or "**DAB**") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The DAB shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. DAB members need not be Parcel Owners or representatives of Parcel Owners. The DAB may, but need not, include architects, engineers, or similar professionals. The Association may compensate DAB members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this chapter, the DAB shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, solely in its discretion, by written notice to the DAB.

Unless the Founder delegates all or a portion of its reserved rights to the DAB or until the Founder's rights under this chapter terminate, the Association shall have no jurisdiction over the review and approval of requests for approval of architectural matters under this chapter. How-

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ever, the Association may enforce the provisions of this chapter and the Design Guidelines.

(c) **Reviewer.** For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

(e) **Public Art Review.** The creation and display of public art shall be a priority within Kaiaulu 'o Kaka'ako. Until the Founder's rights under Section 5.2(a) terminate, the Founder shall review and approve all public art pieces proposed for the Community. Upon the Founder's delegation of authority or upon expiration or termination of the Founder's rights under Section 5.2(a), the Board may appoint an art review committee ("**Public Art Committee**") to assume jurisdiction over the review and approval of public art displays. The Public Art Committee, if appointed, may be comprised of DAB members as well as artists or other persons deemed by the Board to have relevant artistic expertise.

As set forth in Section 14.6, owners of Reserved Housing Units may receive credit against their assessment obligations for contributing public art to Kaiaulu 'o Kaka'ako; provided, public art contributions by Owners of Reserved Housing Units and others is subject to review and approval under this chapter.

5.3. Guidelines and Procedures



The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

(a) **Design Guidelines.** The Founder shall prepare the initial Design Guidelines, which may contain general provisions applicable to all of Kaiaulu 'o Kaka'ako as well as specific provisions that vary among uses, locations within the Community, or other factors. The Design Guidelines are intended to provide guidance to Parcel Owners regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DAB, unless the Founder also delegates the power to amend to the DAB. Upon termination or delegation of the Founder's right to amend, the Board may amend the Design Guidelines.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design

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Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Parcel Owners upon request.

(b) Procedures. Unless the Design Guidelines provide otherwise, no construction of any Improvement may begin on any Parcel until a written design application is approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations without regard to cost. Each Parcel Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements or any portion of any Improvement.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to judicial review so long as they are made in good faith and in accordance with procedures required or authorized under this chapter or the Design Guidelines.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information and within such time period as may be set forth in the Design Guidelines. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the applica-

tion with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Parcel Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

(c) Appeals Process. After the Board's appointment of the DAB, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, within such time period as may be set forth in the Design Guidelines, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the DAB's decision, (ii) affirm a portion and overturn a portion of the DAB's decision, or (iii) overturn the DAB's entire decision. The Board shall notify the applicant and the DAB in writing of its decision after its receipt of the request for appeal with all required information and within such time period as may be set forth in the Design Guidelines. The Board's decision shall include a description of its reasons for overturning the

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DAB's decision. During the appeal process the Parcel Owner shall not commence any work requiring approval hereunder.

5.4. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. While the Reviewer may permit Improvements constructed in conformance with plans it previously has approved to remain in place, it may refuse to approve similar proposals from the same or different Parcel Owners in the future. Approval of applications or plans shall *not* constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances.



When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Parcel Owner may file a request for a variance with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

5.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Kaiaulu 'o Kaka'ako; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Parcel Owners.

The Founder, Founder Affiliates, the Association, its officers, the Board, any committee, and member of any of the foregoing shall not be liable for and assume no responsibility for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder or for the accuracy or completion of construction in accordance with such plans; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on, or modifications to, any Parcel; or (e) any loss or damage relating to the economic viability of any business or enterprise operated on a Parcel. In all matters, the Association shall defend and indemnify the Board, the DAB, and the members of each, as provided in the By-Laws.

5.7. Certificate of Compliance

Any Parcel Owner may request in writing that the Association issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance

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of such a certificate shall prevent the Association from taking enforcement action against a Parcel Owner for any condition known to the Association on the date of such certificate.

appearance of such Improvements is in compliance with the Design Guidelines and the Community-Wide Standard.

5.8. Energy and Water Conservation Measures

The efficient use of energy and the conservation and protection of water and other resources are important elements in the planning and design of Kaiaulu 'o Kaka'ako. In addition to other energy efficiency and conservation measures, the Founder may implement and/or require any or all of the following conservation techniques and practices with respect to all or any of the Parcels:

(a) Connection to a system which draws water from the Pacific Ocean for use in cooling structures;

(b) Installation of water conservation fixtures and appliances;

(c) Structures and improvements designed to facilitate the collection of water;

(d) Implementation of rules regarding the capture and use of excess water runoff from rooftops or other areas; and

(e) Use of native plants in landscaping.

The Founder and the Association shall have the right to enforce any such energy efficiency and water conservation measures or programs implemented for Kaiaulu 'o Kaka'ako.

5.9. Use of Alternative Energy Sources

The use of alternative energy sources or methods, such as wind and photovoltaics, within Kaiaula o' Kaka'ako is encouraged. However, to the extent such energy sources and methods are visible from outside of any structures on the Parcel, they shall be subject to approval by, and conditions imposed by, the Reviewer, which approval shall be based upon a determination that the

Chapter 6

Maintenance, Repair, and Replacement

This chapter describes the Parcel Owners' responsibilities for maintenance and repair of their Parcels and for insuring their Parcels against property damage so that funds will be available for repair and restoration as needed.

6.1. Maintenance by Parcel Owners

Each Parcel Owner shall maintain its entire Parcel, including all structures, landscaping, and other Improvements comprising the Parcel, in a safe, clean, neat, and attractive manner, in good condition and repair, free of trash and debris, and consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Charter, any Supplement, or by law.

The Board is authorized to assign to the Parcel Owners the responsibility for maintaining, at the Parcel Owner's expense, streetscapes, sidewalks, and/or landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Parcel boundary and any street within 10 feet of the Parcel boundary. However, Parcel Owners may not install or remove improvements, trees, shrubs, or other vegetation from this area without prior approval pursuant to Chapter 5.

In addition, a Supplement may provide that a Parcel Owner is obligated to maintain designated portions of its Parcel in a prescribed manner for the benefit of all or portions of Kaiaulu 'o Kaka'ako (*e.g.*, community signage).

6.2. Maintenance by the Association

As further described in Section 11.2, the Association shall maintain the Area of Common Responsibility in a manner consistent with the Go-

verning Documents and the Community-Wide Standard.

The Association may also assume maintenance responsibility for all or part of any Parcel, upon designation of the Parcel or a part of the Parcel as a portion of the Area of Common Responsibility. In addition, upon the Board's determination that the level and quality of maintenance then being provided on a Parcel is not consistent with the Community-Wide Standard or an applicable Supplement, and after notice and an opportunity to cure as provided in Section 8.2, the Association may perform maintenance on a Parcel and assess the costs of providing such maintenance against the Parcel Owner. The Association need not treat all similarly situated Parcels the same.

6.3. Responsibility for Repair and Reconstruction

(a) *Scope of Maintenance Responsibility.* Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair, replacement, and reconstruction as necessary to maintain the property to a level consistent with the Community-Wide Standard.

(b) *Obligation to Repair and Reconstruct.* The development and uses of the various Parcels within Kaiaulu 'o Kaka'ako are interdependent to a significant degree. As such, each Parcel Owner covenants and agrees to repair or reconstruct damaged Improvements on its Parcel in a manner consistent with the original plans and specifications for such Improvement. The Parcel Owner shall commence repairs or reconstruction no later than one year after any damage and diligently pursue such repair or reconstruction to comple-

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tion. The Board, in the exercise of its reasonable discretion, may extend or limit the time requirement for the commencement of repairs or reconstruction after taking into consideration the extent of damages, the Parcel Owner's recovery of insurance proceeds, financing, design and permitting issues, and other relevant factors. The Parcel Owner shall pay any costs that insurance proceeds do not cover.

(c) *Enforcement Rights.* In the event a Parcel Owner fails or refuses to repair or reconstruct an Improvement on its Parcel in accordance with this section, the Association, after notice and an opportunity to cure as provided in Section 8.2, shall be authorized to (i) enter the Parcel and demolish the damaged or destroyed structure or other Improvement; (ii) remove all debris associated with such demolition; and (iii) sod, pave, or otherwise landscape the area in a manner consistent with the Community-Wide Standard. The Association's costs incurred in connection with its actions under this sub-section shall be assessed against the Parcel and the Parcel Owner as a Specific Assessment under Section 14.4.

(d) *Equivalent Units.* In the event of damage to or destruction of an Improvement on a Parcel, the Parcel shall continue to be assigned the number of Equivalent Units for assessment and voting purposes as were assigned to the Parcel immediately prior to such damage or destruction, subject to any changes by the Founder or the Board as permitted in Exhibit "D."

(e) *Community-Wide Standard.* Notwithstanding the obligation to repair and reconstruct Improvements on a Parcel, the Parcel Owner shall be responsible at all times for maintaining the Parcel in a manner consistent with the Community-Wide Standard.

Chapter 7

Use and Conduct

This chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Parcels. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within Kaiaulu 'o Kaka'ako to address changes over time.

7.1. Use, Occupancy, and Transfer of Interests in Parcels

(a) Leasing. The terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Parcel or any portion of a Parcel by any Person other than the Parcel Owner, for which the Parcel Owner receives any consideration or benefit.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Parcel are bound by, and obligated to comply with, the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

The Parcel Owner is responsible for providing the tenant copies of the Governing Documents. In addition, the Association or the Board may adopt Rules governing leasing and subleasing.

(b) Transfer of Title; Notice of Sub-Unit Owners. Any Parcel Owner desiring to sell or otherwise transfer title to its Parcel shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require within 10 days of such transfer. In addition, a Parcel Association shall provide the Board such notice with respect to the transfer of title to a Sub-Unit. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting

title for all obligations of the Parcel Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

In addition to the above, each Parcel Owner, on an annual basis during the month of January, shall give the Board written notice of the name and address of each Sub-Unit Owner within its Parcel in an electronic format as specified by the Board.

(c) Subdivision and Combination of Parcels. No Person other than the Founder shall subdivide or change the boundary lines of any Parcel without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Parcel(s). In addition, the Founder's consent is required for any such action during the Development and Sale Period.

(d) Prohibited Uses. In addition to uses that are restricted by zoning or the Master Plan, the following uses are prohibited within Kaiaulu 'o Kaka'ako:

(i) trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

(ii) junkyards, scrap metal yards, motor vehicle dismantling operations, and sanitary landfills;

(iii) commercial mining or quarry operations;

(iv) commercial excavation of building or construction materials (except in the usual course of the construction of Improvements);

Use and Conduct

(v) dumping, storage, disposal, incineration, treatment, processing, handling, or reduction of garbage, sewage, offal, dead animals, toxic gases or chemicals, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(vi) stockyards and the slaughtering of animals;

(vii) salvage businesses;

(viii) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);

(ix) massage parlors or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(x) "adult entertainment uses," which shall include, for the purposes of this Charter, so-called "hostess bars" and any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are of a pornographic or obscene nature; or (B) sexually explicit games, toys, devices, or similar merchandise; provided, this provision is not intended to prohibit the sale or rental of movies, films, or videos for in-room viewing within a hotel or the sale of adult magazines or books where the sale of such publications is ancillary to the sale of other types of publications through a newsstand, book store, or similar establishment;

(xi) so-called "head shops" (*i.e.*, shops offering or promoting illegal drug paraphernalia

or items intended for or commonly associated with the use of illegal drugs);

(xii) motor and freight terminals mini-warehouses, and warehouse/distribution centers;

(xiii) operations involving the drilling and refining of petroleum;

(xiv) dry cleaning plants; provided, facilities for drop-off or pick-up of items dry cleaned outside of Kaiaulu 'o Kaka'ako are permitted;

(xv) heavy machinery sales and storage facilities;

(xvi) cemeteries, except as otherwise provided with respect to existing gravesites in Section 15.18;

(xvii) jails and correctional facilities; and

(xviii) any other use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would materially increase insurance rates for any insurance maintained by the Association above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan.

In addition to the above, during the Development and Sale Period, the Founder may prohibit any use which it determines would be inconsistent with the Master Plan or the Community-Wide Standard or otherwise incompatible with Kaiaulu 'o Kaka'ako.

(e) Conditional Uses. The following uses, while not prohibited, shall be subject to approval by, and conditions imposed by, the Founder during the Development and Sale Period and, thereafter, by the Board, which approval shall be based upon a determination that such use is in compliance with, or does not violate, the Master Plan, the Community-Wide Standard, and the general scheme of development for Kaiaulu 'o

Use and Conduct

Kaka'ako: thrift stores; consignment shops; stores concentrating on the sale of discounted items or excess inventory; tattoo or body piercing shops; automobile repair and service facilities; textile dying operations or facilities; metal fabrication operations or facilities; wood treating operations or facilities; gun clubs; karaoke bars, night clubs, dance clubs, cabarets, and lounges; and establishments that sell or serve alcoholic beverages or allow customers to bring alcoholic beverages on the premises for consumption (except for any establishment (*e.g.*, a restaurant) that sells or otherwise provides alcoholic beverages as a product or service which is ancillary to its primary business).

(f) Pre-Redevelopment Parcels. Each Parcel Owner acknowledges and agrees that Kaiaulu 'o Kaka'ako is a redevelopment of an urban area, which has been a locale for a multitude of diverse uses, some of which may be prohibited uses under this section. In a desire to provide for the use of Parcels prior to their being redeveloped, to permit the orderly and fair relocation and replacement of existing tenants and uses within Kaiaulu 'o Kaka'ako, and to acknowledge and permit the adaptive re-use of Parcels, the Founder may, in its discretion, and regardless of the prohibitions set forth in this section or elsewhere in any of the Governing Documents (i) permit existing uses (*i.e.*, those in existence as of the date of recording of this Charter) to continue on or in Pre-Redevelopment Parcels (defined below); (ii) replace existing uses in Pre-Redevelopment Parcels with the same or other uses by different tenants or users; (iii) allow for the relocation of existing uses to other Pre-Redevelopment Parcels; and (iv) permit other uses in Pre-Redevelopment Parcels.

A "**Pre-Redevelopment Parcel**" include any Parcel on which the predominant structures were in existence as of the date of recording this Charter, continue to exist without substantial alteration, and for which the intent, as designated in writing at any time and from time to time by the Founder, is for the Parcel ultimately to be

improved and used in a manner designed to comply with the intended use for the Parcel under the Master Plan (regardless of how the structures on the Parcel are owned). The adaptive re-use of a structure on a Parcel, as described in Chapter 5, need not remove it from classification as a Pre-Redevelopment Parcel.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern Kaiaulu 'o Kaka'ako. The initial Rules attached as Exhibit "C" are a part of that framework. The Board and the Parcel Owners are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) Board Authority. Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) Membership Authority. Subject to the notice requirements in subsection (c), the Parcel Owners and Sub-Unit Owners representing at least 75% of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted.

(c) Notice. The Board shall send notice to all Parcel Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Parcel Owners at which such action is to be considered. At any such meeting, Parcel Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

Use and Conduct

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas and regulation of traffic and parking, notwithstanding that such policies may be published as part of the Rules.

(d) Effective Date. A Rules change adopted under this section shall take effect 30 days after the date on which written notice of the Rules change is given to the Parcel Owners. During the Development and Sale Period, the adoption or change of any Rule shall be subject to the Founder's approval.



Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Parcel Owners have the authority to adopt and modify rules as needed to address new or changing circumstances.

(e) Conflicts. No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), this Charter shall control.

7.3. Protection of Parcel Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Parcels shall be treated similarly; however, the Rules may vary by location, use, or other distinct characteristics of areas within Kaialu 'o Ka-ka'ako.

(b) Activities Within Parcels. No Rule shall interfere with any permitted use of a Parcel, except that the Association may prohibit activities which are inconsistent with the Master Plan, that create monetary costs for the Association or other Parcel Owners, that create a danger to anyone's health or safety, that create unsightly conditions visible from outside of a structure, or that are an unreasonable source of annoyance. In addition, Section 7.1 prohibits or restricts certain uses within a Parcel.

(c) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Parcels or rights to use the Common Area to the detriment of any Parcel Owner over that Parcel Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 14.

(d) Leasing and Transfer of Parcels. No Rule shall prohibit leasing or transfer of any portion of a Parcel or require approval prior to leasing or transferring a Parcel.

(e) Abridging Existing Rights. No Rule shall unreasonably interfere with the permitted use or operation of a Parcel in full compliance with this Charter and the Rules in effect immediately prior to the enactment of such Rule. In addition, no Rule shall require that a Parcel Owner dispose of personal property kept in or on a Parcel in compliance with the Rules in effect at the time such personal property was brought onto the Parcel.

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This provision protects the existing uses of Parcels. It is intended to prevent a situation in which a Parcel Owner is forced to halt the operation of a business that was allowed prior to a change in the Rules.

(f) Reasonable Rights to Develop. No Rule may unreasonably interfere with the Founder's ability to develop, market, and sell property described in the Master Plan.

(g) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement.

7.4. Parcel Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Parcel Owner acknowledges and agrees that the use, enjoyment, and marketability of its Parcel is limited and affected by the Rules, which may change from time to time, subject to the limitations and protections provided in this chapter. All Parcel purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document.

A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

7.5. Construction Activities on Parcels

The development and construction of Improvements within any Parcel shall not unreasonably interfere with the use, operation, or enjoyment of other portions of Kaiaulu 'o Kaka'ako. In addition, construction staging areas on the Parcels shall be adequately screened at all times. The Founder may impose more specific regulations governing development and construction activities, including the screening of construction staging areas.

7.6. Urban Living; Quiet Enjoyment

Kaiaulu 'o Kaka'ako is a high-density urban development containing and surrounded by a variety of residential, commercial, and civic uses and life in Kaiaulu 'o Kaka'ako will include noises, smells, lights, sights, and behavior normally associated with city life. While the use and conduct restrictions set forth in this chapter and the Rules are intended to enhance lifestyle and contribute to a Parcel Owner's, or other occupants', right to the quiet enjoyment of his or her property within Kaiaulu 'o Kaka'ako, they will not and are not intended to eliminate all conditions and behaviors normal and customary to urban environments and to permitted uses within the Community.

Chapter 8

Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Parcel Owners and operators within Kaiaulu 'o Kaka'ako. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

8.1. Compliance

Parcel Owners and Sub-Unit Owners must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Parcel Owner shall be jointly and severally responsible with the Sub-Units and tenants of any portion of its Parcel for, and may be sanctioned for, any violation of the Governing Documents by such Persons, and for any damage to the Area of Common Responsibility that such Persons may cause.



All Parcel Owners and occupants must abide by the Governing Documents and are subject to various penalties, including fines and the loss of the right to use the Common Areas if they fail to do so.

8.2. Remedies for Non-Compliance

The Association, the Founder, and every affected Parcel Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice to the violator and the Parcel Owner, if different, and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Sub-Unit and/or Parcel. In the event that any tenant or Sub-Unit Owner of a Parcel violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Parcel Owner shall pay the fine upon notice from the Board;

(ii) suspend a Parcel Owner's right to vote (except that no hearing is required if the Parcel Owner is more than 90 days delinquent in paying any assessment or other charge owed to the Association);

(iii) suspend services the Association provides to a Parcel (except that no hearing is required if the Parcel Owner is more than 90 days delinquent in paying any assessment or other charge owed to the Association);

(iv) exercise self-help or take action to abate any violation of the Governing Documents occurring on a Parcel in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) require a Parcel Owner, at its own expense, to (A) remove any structure or other Improvement on such Parcel Owner's Parcel in violation of Chapter 5, the Community-Wide Standard, or other requirements under the Governing Documents, and to restore the Parcel to its previous condition, or (B) perform such maintenance or other work on a Parcel as is required to bring the Parcel into compliance with the Community-Wide Standard or other requirements under the Governing Documents. Upon failure of the Parcel Owner to do so, the Board or its designee, after 10 days' written notice to

Compliance and Enforcement

the Parcel Owner, shall have the right to enter the property, remove or otherwise cure the violation, and restore the property to substantially the same condition as previously existed or to a condition which would otherwise be in compliance with the Governing Documents. Any such action shall not be deemed a trespass;

(vi) levy Specific Assessments to cover costs incurred by the Association to bring a Parcel into compliance with the Governing Documents; and

(vii) record a notice of violation with respect to any Parcel on which a violation exists.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Parcel in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) enter the property and exercise self-help to remove or cure a violating condition if a Parcel Owner fails to take action as required pursuant to subsection (a)(v) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iv) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Sanctions Against Sub-Unit Owners and Other Parcel Occupants. The Association, by and through the Board, may enforce any pro-

vision of the Governing Documents, including any Rule, against any Parcel Owner, Sub-Unit Owner, or occupant of a Parcel or Sub-Unit; provided, the Parcel Owner ultimately is responsible for compliance with the Governing Documents by Sub-Unit Owners and other occupants of the Parcel Owner's Parcel. As such, any reference in Sections 8.2(a) and (b) to sanctions against the Parcel Owner shall also apply to sanctions against a violating Sub-Unit Owner or occupant of a Parcel, if different than the Parcel Owner.

In an appropriate situation, the Association may assign or delegate all or any of its enforcement rights with respect to Sub-Unit Owners and other occupants of a Parcel to the Parcel Owner.

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) a technical violation is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from en-

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forcing the same provision at a later time or prevent the enforcement of any other provision.

8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

PART THREE: ASSOCIATION OPERATIONS

Chapter 9

Promotion of Kaka'ako

This chapter provides for the Association's right to participate in promoting Kaka'ako.

9.1. Authority

The Association may establish and implement programs and activities designed to promote Kaiaulu 'o Kaka'ako, including activities designed to project a positive image, and increase awareness and support of Kaiaulu 'o Kaka'ako. The Association's promotional activities may include, but are not limited to, market research, public relations, and advertising services. It may engage in joint enterprises with other Persons or groups to accomplish its promotional goals. It also may provide various services which the Board deems appropriate, such as programs designed to create employment opportunities within Kaiaulu 'o Kaka'ako.

The Association may promote single entities or components within Kaiaulu 'o Kaka'ako, so long as the Board deems the promotion of single entities to be reasonably related to the promotion of Kaiaulu 'o Kaka'ako as a whole.

The Association's activities may be on-site, off-site, within, and outside of the State of Hawaii and may be conducted in cooperation with Persons who are not affiliated with Kaiaulu 'o Kaka'ako.

Unless the Board determines that such costs provide a desired benefit to the Community as a whole, the Association's costs incurred in the promotion of Kaiaulu 'o Kaka'ako under this chapter shall be levied as a Specific Assessment against non-residential uses under Chapter 14.

9.2. Commercial Advisory Committee

Prior to termination of the Founder Control Period, the Founder shall appoint a commercial advisory committee to assist the Association in developing, implementing, and budgeting for promotional activities and programs for Kaiaulu 'o Kaka'ako. The advisory committee shall consist of three, five, or seven persons, who shall be Parcel Owners or representatives of Parcel Owners of Parcels used, in whole or in part, for non-residential purposes. Advisory committee members shall serve two-year, staggered terms; provided, the initial advisory committee members shall serve terms of one year, two years, and three years, respectively, in order to establish staggered terms going forward. Successor members shall be appointed by those members of the committee whose term is not ending. The committee also may include marketing, advertising, or similar professionals as *ex officio* members, whose compensation, if any, shall be established by the Board upon the recommendation of the Parcel Owners serving on the committee.

The advisory committee shall conduct itself in accordance with the requirements for other Association committees set forth in the By-Laws and such other requirements as the Founder may impose when establishing the committee. During the Development and Sale Period, the Founder shall be an *ex officio* member of the advisory committee.

Chapter 10

Tools for Community Achievement

Achieving the goal of making Kaiaulu 'o Kaka'ako a truly special place to live and work requires more than just meaningful, productive opportunities to share ideas, suggestions, and desires. It also requires a creative process, specialized staffing, and great communication. However, many of the best community building ideas will come from the community itself.

10.1. Community Development Manager

The Association may create and fund the position of "**Community Development Manager**" for the collective benefit of Kaiaulu 'o Kaka'ako and the surrounding community. The Community Development Manager's role shall be to create, foster, and enhance community and the quality of life within and outside of Kaiaulu 'o Kaka'ako by providing leadership for the overall planning, development, execution, and continuing evaluation of Kaiaulu 'o Kaka'ako's "community creation program." Kaiaulu 'o Kaka'ako's community creation program shall include such community-building activities, services, and programs as the Board deems necessary, desirable, or appropriate.

The Community Development Manager's specific responsibilities may include, but are not limited to in any way, all or any of the following:

- (a) coordinating, promoting, and facilitating community-wide events and activities;
- (b) conducting educational programs and contracting for and coordinating higher-level, specialized education;
- (c) working with volunteers and staff members and cooperating with the Board to implement the Association's objectives and administer its daily affairs;
- (d) motivating Parcel Owners, residents, and invitees to participate in and volunteer their time and skills for community events and activities;
- (e) enhancing communication among Parcel Owners through the creation and maintenance of websites, newsletters, forums, and other medium; and
- (f) seeking out new opportunities for building community life and spirit.

The Community Development Manager may be employed or otherwise contracted for by the Association on a part-time or full-time basis. The Board shall establish the Community Development Manager's compensation and may modify such compensation from time to time to reflect changes in the employment market, the Association's economic viability, and other relevant factors. In addition, the Board shall fund the Community Development Manager's operational expenses in such amounts as the Board deems sufficient. The Board may enact rules to ensure the successful creation, staffing, funding, operation, execution of duties, and continuity of the Community Development Manager position.

10.2. Community Cornerstones

The Founder may establish "community cornerstones" for Kaiaulu 'o Kaka'ako which shall be guiding principles or philosophies by which Kaiaulu 'o Kaka'ako is to be developed, operated, and maintained. Community cornerstones may relate to, without limitation or obligation, the environment, education, preservation of culturally or historically significant sites, indigenous architecture and relation to nature, and the advancement of public arts. The Association shall be obligated to adopt such community cornerstones as the Founder may establish and may

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create a fund for their advancement through assessments to be levied against all or some Parcels in the manner provided for in Chapter 14.

10.3. Community Education and Training

In recognition of the fact that Parcel Owners and other occupants and residents of Kaiaulu 'o Kaka'ako who are well-informed regarding their community's structure and governance and their rights and responsibilities in the community, have greater capacity to participate in civic life and in the affairs of the Community, the Board may establish education, training, and orientation programs relating to community governance, including "continuing" education programs, for everyone in Kaiaulu 'o Kaka'ako. The Board may utilize any appropriate method to achieve these education goals, including a community intranet; learning centers, computer centers, and business centers; and coordinated activities with the Community Development Manager, Association committees, or Board members.

Community education shall begin as early as the marketing stage or the point of sale of property within the Community and may include orientation classes regarding community structure and governance; the nature, extent, and purpose of the covenants, rules, and regulations; and community-building issues such as the mission for the Community, opportunities to participate in and affect the community's evolution and growth, and general community orientation.

Community governance education is an essential component of living in the Community. Educating Parcel Owners regarding ownership rights, voting privileges, property use restrictions, assessment responsibility, community development, developer turnover or transition, community activities, etc., should be an ongoing innovative process geared toward including residents of all ages. Governance education may be offered in the form of seminars, simple question and answer pamphlets, audio/video recordings, through a community cable channel, or through an interactive website. The Board may also

coordinate with nationally recognized organizations such as the Urban Land Institute or the Community Associations Institute to offer programs regarding community governance or coordinate with nationally recognized speakers in the field to provide community governance instruction and workshops.

10.4. Volunteerism

In recognition of the fact that volunteerism and engagement benefits both Kaiaulu 'o Kaka'ako and the larger community, the Board desires to promote a strong volunteer ethic among occupants and residents of the Community and encourage and facilitate the organization of volunteer organizations within the Community. To accomplish this end, the Board may grant incentives for volunteering, such as exemptions from specific program fees, credits against assessments for Reserved Housing Unit owners, and public recognition of distinguished volunteers and their achievements. The Board also may cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by making facilities available for the organization's use or sponsoring the organization's activities. Additionally, the Board may compile a list of people interested in volunteering and make such data available to other volunteer organizations upon each volunteer's consent.

10.5. Community Enrichment

The Association may provide or provide for continuing education and learning opportunities. The range of continuing education opportunities offered in Kaiaulu 'o Kaka'ako may be determined by interest, participation, and satisfaction, as well as the budget. In the event the Association elects to provide or provide for such opportunities, the Association may make every effort to provide or provide for a variety of continuing education opportunities that reflect the diverse interests of the Community, *i.e.*, finance, art, music, exercise, community wellness, gardening, environmental preservation, sports, and recreation.

Chapter 11

Property Management

This chapter establishes the Association's obligation to accept ownership or other responsibility for property that the Founder designates as Common Area and to maintain, operate, and insure it for the benefit of Kaiaulu 'o Kaka'ako.

11.1. Acceptance and Control of Association Property

(a) Transfers and Conveyances by the Founder. The Founder, Founder Affiliates, or their respective designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder or a Founder Affiliate any real property originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) Management and Control. The Association is responsible for management, operation, and control of any Common Area. The Association may enter into leases, licenses, or operating agreements with respect to portions of Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Parcel Owners and occupants of Parcels and may charge use fees in such amount as the Board may establish for such use.

11.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes any Common Area and may also include, without limitation:

(a) public streets, woonerfs, alleys, sidewalks, public gathering areas, entry features, public open space, parks, landscaping, and other improved or unimproved areas within or serving Kaiaulu 'o Kaka'ako;

(b) common utilities and community landscaping located outside the Common Area, including landscaping around the perimeter of Kaiaulu 'o Kaka'ako;

(c) landscaping, lighting, and other improvements within public rights-of-way within or abutting Kaiaulu 'o Kaka'ako (except as maintained by a Parcel Owner in accordance with Section 6.1) to the extent that responsible governmental authorities do not maintain it to the Community-Wide Standard;

(d) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(e) any property and facilities that the Founder owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such

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privilege of use and enjoyment by written notice to the Association.

The Association may maintain property it does not own within or adjacent to Kaiaulu 'o Kaka'ako, including, without limitation, Parcels (*e.g.*, gutters, areas between Parcel property lines and building setback lines), woonerfs, open space or parks serving the Community, or public rights-of-way and other property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard, or if such maintenance is otherwise assumed by the Founder or the Association pursuant to agreements with or approval by the City and County of Honolulu or other governmental authority.

Certain portions of the Area of Common Responsibility may be maintained to a higher level or standard than others. For example, those streets identified by the Founder as being featured streets or "park to park" connectors within the Community for which a higher level or maintenance or additional services or community facilities are provided.

Without limiting the generality of the foregoing, the Association shall assume all of the Founder's maintenance responsibilities to the City and County of Honolulu or its governmental or quasi-governmental subdivisions, any state and federal entities or agencies, and similar entities of any kind with respect to the Common Area, and shall indemnify and hold the Founder harmless with respect to such assumed responsibilities. In addition, the Association shall comply with governmental or quasi-governmental permits, approvals, or regulations concerning the Community.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

11.3. Operation of Area of Common Responsibility

In its discretion, the Board may (a) temporarily close streets or other portions of the Area of Common Responsibility to accommodate street fairs, festivals, or other events within Kaiaulu 'o Kaka'ako (subject to such notice or approval requirements that the City and County of Honolulu may require); (b) establish reasonable operating hours for the Area of Common Responsibility, which may vary by season; or (c) temporarily close or interrupt operation of the Area of Common Responsibility as it may determine appropriate to perform maintenance or repairs. Notwithstanding the above, the Association may not install or permit the installation of speed bumps on any public street within Kaiaulu 'o Kaka'ako without the prior approval of the City and County of Honolulu.

11.4. Restoring Damaged Improvements within the Area of Common Responsibility

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall commence repairs or reconstruction of damaged Common Area improvements in a timely manner and shall endeavor to complete such work no later than one year after such damage occurs (subject to reasonable delays caused by events outside of the Association's control), unless Parcel Owners and Sub-Unit Owners representing at least 80% of the total votes in the Association, decide within 180 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the

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loss, or both, are not available to the Association within such 180-day period, then the period shall be extended until such funds or information are available.

In addition to the vote required above, during the Development and Sale Period, the Founder's consent is required for any decision not to repair or reconstruct Common Area improvements.



This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Parcel Owners who benefit from the Common Area prefer not to rebuild.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Parcel Owners, or the Parcel Owners or Sub-Unit Owners within an affected Service Area, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Parcel Owners or Sub-Unit Owners, levy Special Assessments to cover the shortfall.

11.5. Relationships with Other Properties

The Association may enter into contractual arrangements or may be bound by a recorded covenant to provide for sharing of costs between Kaiaulu 'o Kaka'ako and the owner(s) of adjacent properties for the (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services. During the Founder Control Period, the Associa-

tion shall enter into such agreements or covenants upon the Founder's request.

Chapter 12

Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of Kaiaulu 'o Kaka'ako at large and individual Parcels. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

12.1. Provision of Services

The Association may arrange for or provide services to Parcel Owners and their Parcels, directly or through "arms-length" contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Parcels, or it may offer various services at the option of particular Parcels, or both. By way of example and not limitation, such services might include such things as utilities, fire protection, security, trash collection, landscape or building maintenance, pest control, transportation, recycling, and telecommunications or other similar community systems.

Any Association contract for services may require individual Parcel Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Parcel Owner or the occupants of a Parcel, may result in termination of services provided to such Parcel. Any such termination shall not relieve the Parcel Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Parcel as a Common Expense or Service Area Expense pursuant to Chapter 14.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

Any Association contract for services shall be of reasonably limited duration.

12.2. Provision of Services to Service Areas

(a) Service Areas Designated by Founder.

The Association shall provide services to any Service Area designated by the Founder pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Service Area.

(b) Service Areas Designated by Board.

In addition to Service Areas which the Founder may designate pursuant to Section 3.2, any group of Parcel Owners (including a Parcel Association) and/or Sub-Unit Owners may petition the Board to designate their Parcels or Sub-Units (or a combination of Parcels and Sub-Units) as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Parcels, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Persons representing a majority of the votes allocated to the Parcels or Sub-Units within the proposed Service Area based upon the assignment of Equivalent Units under Exhibit "D" and by the Founder, if the Founder owns any Parcel or Sub-Unit within the proposed Service Area.

Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and submit a proposal to the Parcel Owners and/or Sub-Units in the proposed Service Area stating such

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terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Parcel Owners and/or Sub-Units Owners representing at least 75% of the total votes allocated to the Parcels and/or Sub-Units within the proposed Service Area, based upon the assignment of Equivalent Units, approve the proposal in writing, the Board shall designate the Parcels as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 14.2(c).

(c) Service Area Voting – Sub-Units. In the event a proposed Service Area is to include a Parcel containing Sub-Units, only the Sub-Unit Owners of the Sub-Units within the Parcel, as opposed to the Parcel Owner of the Parcel, may sign the petition requesting designation as a Service Area. In calculating the votes with respect to such petition or any other matter calling for a vote within the Service Area, only the Equivalent Units assigned to the Sub-Units, and not all Equivalent Units assigned to the Parcel containing the Sub-Units, shall be considered and such votes shall be cast by the Sub-Unit Owners of the Sub-Units within the Service Area and not by the Parcel Owner of the Parcel containing such Sub-Units.

12.3. Community Technology

The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Parcel Owners and business operators to interact and participate in Association-sponsored activities. To the extent Hawai'i law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and vot-

ing by electronic means, and send and collect assessment and other invoices by electronic means.

12.4. Community Wellbeing

The Association may provide or provide for services designed to maintain or enhance a comfortable and safe secure environment within Kaiaulu 'o Kaka'ako. Any actions the Association takes in this regard shall be as to the entire Community and shall not include providing security services to any individual Parcel or business operations within Kaiaulu 'o Kaka'ako; provided, the Association may provide for a heightened level of service for particular areas of the Community based upon the intensity of use of the area or other factors the Board deems relevant. **As more fully set forth in Section 16.2, each Parcel Owner acknowledges and agrees that the provision of security services by the Association does not guarantee the safety or security of Kaiaulu 'o Kaka'ako, and each Parcel Owner and occupant of a Parcel, and their respective guests and invitees, is responsible for their own personal safety and the security of their property within Kaiaulu 'o Kaka'ako.**

12.5. Transportation Management

(a) Authority. The Founder or the Association may establish and implement a system or systems to provide transportation service within Kaiaulu 'o Kaka'ako, to satisfy requirements in the Master Plan for transportation within Kaka'ako (including pedestrian transportation), to connect with public transportation systems serving points outside of the Community, and to provide for the sharing or joint use of parking facilities within the Community (collectively, "**Transportation Systems**").

The Founder may assign to the Association such responsibilities and authority as to all or any aspect of the conception and operation of the Transportation Systems as it sees fit. The Associ-

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ation may establish committees, create subsidiary entities (including, but not limited to, entities formed pursuant to Section 501(c)(3) of the Internal Revenue Code), or contract with third parties for the operation and administration of all or any component of the Transportation Systems.

(b) *Transportation Management Association.* The Founder or the Association may establish a transportation management association ("TMA") for the purpose of administering or overseeing the operation of all or any of the Transportation Systems, including, but not limited to, pursuing funding or transit subsidies for the operation and promotion of the systems, coordinating and promoting use of public or community transportation and transit services, sponsoring and promoting programs and activities designed to reduce or control vehicular traffic within Kaiaulu 'o Kaka'ako, and performing related activities. The TMA may be a committee or subsidiary of the Association.

The Founder, the Association, the TMA, or their assigns shall be authorized to perform the following functions:

(i) Impose upon any Person conducting a business within Kaiaulu 'o Kaka'ako the requirement that they cooperate with or participate in transportation studies which assess and determine travel patterns and community needs relating to traffic and parking control;

(ii) Devise, implement, and require participation in any plan for the sharing or joint use of parking facilities, whether on a concurrent basis or on a staggered use basis;

(iii) Make regulations and impose guidelines governing the use and operation of the Transportation Systems; and

(iv) Perform such other functions as may be necessary or appropriate for the operation, management, or monitoring of the Transportation Systems.

(c) *Funding of Operation and Maintenance.* The costs of operating and maintaining the Transportation System shall be a Common Expense to be allocated among all Parcels as part of the Base Assessment in accordance with Chapter 14; provided, the Founder, the Association, the TMA, or their assigns also may charge user fees for the use of any component of the Transportation Systems and seek subsidies or contributions from private or public sources to reduce the costs which must otherwise be paid through the collection of assessments. The Founder, the Association, the TMA, or their assigns shall be authorized to enter into commercially reasonable agreements, as determined in the Board's discretion, with any Person to operate all or any portion of the Transportation Systems on a commercial basis.

(d) *Obligation to Participate; Enforcement.* All Parcel Owners shall be obligated to abide by all regulations and guidelines imposed with respect to the Transportation Systems and to contribute to the cost of operating the Transportation System as a Common Expense of the Association.

(e) *Conveyance of the Transportation System.* The ownership of any component of the Transportation Systems may change at any time and from time to time by virtue of, without limitation, any sale or assumption of operations to or by one or more independent Persons.

Chapter 13

Insurance

The Association is responsible for insuring against various types of risks, including damage to Common Area properties, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association and Parcel Owners must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

13.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Parcel within a Service Area, to the extent mandated by a Supplement or to the extent authorized by a Supplement and deemed appropriate by the Board.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted.

Provided such coverage is economically feasible, Association property insurance shall not generally exclude coverage for loss or damage arising out of an act of terrorism. The limits of Association property insurance policies shall be sufficient

to cover the replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$10,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. However, if additional coverage and higher limits are available at a reasonable cost such that a reasonably prudent person would obtain such insurance, the Association shall obtain such additional coverages or limits. Such coverage may be provided through a combination of primary and umbrella policies;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage in the amount of at least \$10,000,000.00, if reasonably available, or, if not reasonably available, the highest amount of coverage available at reasonable cost; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Parcels plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

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The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the City and County of Honolulu. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

13.2. Deductibles



The Board may hold any Person who causes damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 13.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Parcel Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Parcel Owner(s) and their Parcel(s) as a Specific Assessment.

13.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Parcel Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Hawai'i which holds an A.M. Best's rating of A-VII or better, if reasonably available, or, if not, the most nearly equivalent;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its Members, as their interests may appear;

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

(d) contain an inflation guard endorsement; and

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

13.4. Association Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance benefiting just the Parcels within a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

Chapter 14

Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Association to levy against the Parcels and collect from the Parcel Owners and the Sub-Unit Owners. Assessments are secured by a lien on each Parcel.

14.1. Association Expenses

(a) Common Expenses. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Parcel Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may benefit from the expenses incurred or share such expenses pursuant to this Charter, any Supplement, or any other recorded covenant or agreement.

(b) Service Area Expenses. All expenses that the Association incurs or expects to incur in connection with providing benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a

reasonable administrative charge in such amount as the Board deems appropriate.

14.2. Budgeting for and Allocating Association Expenses

(a) Preparation of Budget. Prior to the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

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(b) Calculation of Base Assessments. Upon determining the total amount of income required to be generated through the levy of "**Base Assessments**," the Association shall allocate such amount among all Parcels subject to assessment on the effective date of the budget based upon the assignment of Equivalent Units, as described in Exhibit "D." The amount allocated to each Parcel shall then be levied as a Base Assessment.

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 14.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.

(c) Calculation of Service Area Assessments. The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Parcels or Sub-Units, as applicable, in the Service Area that are subject to assessment and levied as a "**Service Area Assessment**." Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be allocated based upon the assignment of Equivalent Units, as described in Exhibit "D," except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Parcels or Sub-Units in proportion to the benefit received, as the Board may reasonably determine.

Service Area Assessments shall be levied against Parcel Owners within the Service Area except where less than all of the Sub-Units within a Parcel are members of the Service Area. In such case, the Service Area Assessment shall be levied against only the Sub-Unit Owners of the Sub-Units within such Parcel, as opposed to the Parcel Owner of the Parcel.

All amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Parcel Owner at least 30 days prior to the beginning of each fiscal year. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Parcel Owners and Sub-Unit Owners representing at least 67% of the total votes in the Association. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Persons representing at least 67% of the total votes allocated to the Parcels and/or Sub-Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense. Notwithstanding the above, Kamehameha Schools, as a Parcel or Sub-Unit Owner, shall not be permitted to exercise its right to vote on the disapproval of any budget for a 25-year period following the date this Charter initially was recorded.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on

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petition of the Parcel Owners as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Parcel Owners and/or Sub-Unit Owners representing at least a majority of the votes within the Service Area. Any such petition must be presented to the Board within 15 days after delivery of the budget and notice of any assessment.

If the Board fails for any reason to determine the budget for any year, then the budget for the previous year shall continue in effect until a new budget is determined. If any proposed budget is disapproved, then the budget for the previous year shall continue in effect subject to increase in an amount determined by the Board but which shall not result in an increase in assessment per Equivalent Unit over the previous year by more than the greater of (i) 10%, or (ii) the percentage increase in the Consumer Price Index during the previous fiscal year; provided, such limitation on the budget increase shall not apply to the cost of any service provided pursuant to a Parcel Owner's (or a Service Area's) specific request.

The "Consumer Price Index" or "CPI" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (Honolulu; Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency, or discontinued, then the index (or a substitute procedure that reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculation described above. In the event a dispute arises concerning the selection of such alternative index, the parties shall agree upon an alternate index.

(e) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

14.3. Special Assessments

The Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Parcel Owners and Sub-Unit Owners representing more than 50% of the votes attributable to Parcels subject to assessment and shall be allocated among the Parcels based on the assignment of Equivalent Units, as described in Exhibit "D." Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Parcel Owners and/or Sub-Unit Owners representing more than 50% of the total votes allocated to the Parcels and/or Sub-Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 14.2(c). In addition, during the Founder Control Period, any Special Assessment shall also be subject to the Founder's written consent.

Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

14.4. Specific Assessments

The Association may levy "**Specific Assessments**" against a particular Parcel or Sub-Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Parcel or Sub-Unit upon request of the Parcel or Sub-Unit Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 12.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

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(b) to cover costs incurred in bringing the Parcel or Sub-Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Parcel or Sub-Unit Owner or occupants of the Parcel or Sub-Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Parcel or Sub-Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection;

(c) to cover the Parcel's or Sub-Unit's pro rata share of any costs that the Association incurs in bringing the Service Area of which the Parcel or Sub-Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Parcel Owners of Parcels, or Sub-Unit Owners of Sub-Units, in the Service Area and an opportunity for such Parcel or Sub-Unit Owners to be heard before levying any such assessment;

(d) to cover any deductible assessed pursuant to Section 13.2; and

(e) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Parcel or Sub-Unit Owner or levy against any particular Parcel or Sub-Unit.

14.5. Authority to Assess Parcel Owners; Time of Payment

The Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to a Parcel and any Sub-Unit within the Parcel on the date: (a) the Parcel is made subject to this Charter; or (b) the Board determines a budget and levies assessments pursuant to this section, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Parcel or Sub-Unit shall be adjusted according to the number of months remaining in

the fiscal year at the time assessments commence on the Parcel.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel and impose special requirements for Parcel Owners with a history of delinquent payment (two or more delinquent payments in the past). If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Parcel or Sub-Unit Owner is delinquent in paying any assessments or other charges levied on its Parcel or Sub-Unit, the Board may require all outstanding balances on all assessments to be paid in full immediately.

14.6. Obligation for Assessments



Each Parcel Owner agrees to pay all assessments levied against its Parcel. If the Parcel Owner does not pay on time, that Parcel Owner will be charged late fees on all past due amounts. Parcel Owners may not claim a reduction in their assessments due to action or inaction by the Association.

(a) *Personal Obligation.* Each Parcel Owner covenants and agrees to pay when due all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum, subject to the limitations of Hawai'i law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Parcel Owner and a lien upon each Parcel until paid in full; provided, in the case of a Parcel governed by a Parcel Association or in the case of a Service Area Assessment levied directly against a Sub-Unit, the Association's lien shall be upon each Sub-Unit within the Parcel or Service Area in a pro rata amount

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corresponding to the Sub-Unit's share of any unpaid assessment or other charge, as determined based upon the assignment of Equivalent Units, as described in Exhibit "D." Upon a transfer of title to a Parcel or a Sub-Unit, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance.

Notwithstanding the above, Reserved Housing Unit owners may be permitted to satisfy a portion of their assessment obligation to the Association in the form of "in kind" contribution by creating public art for display in the Community or performing other community services which the Board identifies as eligible for "in kind" credit.

The Board's failure to fix assessment amounts or rates or to deliver or mail an assessment notice shall not be deemed a waiver, modification, or a release of any Parcel or Sub-Unit Owner from the obligation to pay assessments. In such event, each Parcel and Sub-Unit Owner shall continue to pay Base Assessments and Service Area Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Parcel or Sub-Unit Owner shall be exempt from liability for assessments by non-use of Common Area, abandonment of a Parcel, or non-use of services provided within the Service Area to which the Parcel is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Parcel Owner and, as applicable with respect to Service Area Assessments, on the part of a Sub-Unit Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Parcel Owner or Sub-Unit Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Founder's Financial Obligations to Association. The Founder shall be liable for assessments on any Parcels the Founder or any Founder Affiliate owns that are subject to assessment, except that during the Founder Control Period, the Founder may satisfy the obligation to pay Base Assessments, Service Area Assessments, and Special Assessments for Common Expenses or Service Area Expenses, as applicable, on such Parcels either by paying such assessments in the same manner as any other Parcel Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Parcel Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense or Service Area budget. Unless the Founder otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay assessments on any Parcels the Founder or a Founder Affiliate owns that are subject to assessment in the same manner as any other Parcel Owner liable for such assessments.

Regardless of the Founder's election under this section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.



During the Founder Control Period, the Founder may choose to pay the difference between the Association's budgeted and actual expenses, rather than paying assessments on the Parcels it or a Founder Affiliate owns.

(c) Allocation of Assessments Within a Parcel. With respect to any Parcel containing Sub-Units, if all of the Sub-Units within the Parcel have the same Land Use Classification under Exhibit "D" (e.g., Sub-Units within a residential condominium), then the Parcel Association may allocate and levy assessments levied against the Parcel under this chapter among the Sub-Units pursuant to its governing documents. For example, the Parcel Association may allocate and levy assessments levied against the Parcel based on the percentage of common interest allocated among the Sub-Units if that is the method by which assessments are allocated in the Parcel Association's governing documents.

If Sub-Units within the Parcel have different Land Use Classifications (e.g., a Parcel may contain residential Sub-Units and retail Sub-Units), the Parcel Association shall allocate and levy assessments levied against the Parcel under this chapter among Land Use Classifications within the Parcel in accordance with the assignment of Equivalent Units, as described in Exhibit "D." This first allocation among each group of Sub-Units with the same Land Use Classification shall apply notwithstanding any differing allocation formula by which the Parcel Association assesses its members under other covenants applicable to the Parcel. The second allocation among each group of Sub-Units within the Parcel with the same Land Use Classification may be pursuant to the Parcel Association's governing documents. For example, residential Sub-Units within a Parcel, as a group, shall be allocated the number of Equivalent Units assigned to such residential Sub-Units under Exhibit "D;" however, the Parcel Association may allocate and levy the assessment to each residential Sub-Unit pursuant to the percentage of common interest allocated only among

the residential Sub-Units if that is the method by which assessments are allocated in the Parcel Association's governing documents.

14.7. Lien for Assessments

(a) Existence of Lien. The Association shall have a lien against each Parcel to secure payment of assessments, as well as interest, late charges (subject to the limitations of Hawai'i law), and costs of collection (including attorneys fees and expenses); provided, in the case of a Parcel governed by a Parcel Association, and in the case of any assessment or other charge levied directly against a Sub-Unit, the Association's lien shall be upon each Sub-Unit in a pro rata amount corresponding to the Sub-Unit's share of any unpaid assessment or other charge, as determined based upon the assignment of Equivalent Units, as described in Exhibit "D." Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the liens of any special tax district or other public entity relating to funds provided for the construction of infrastructure or other improvements within Kaiaulu 'o Kaka'ako; and (iii) the lien or charge of any recorded mortgage or other security instrument affecting title to the Parcel or Sub-Unit ("**Mortgage**") made in good faith and for value having first priority over any other Mortgage on the Parcel or Sub-Unit.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Parcel or Sub-Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) Enforcement of Lien. The Association may bid for the Parcel or Sub-Unit, as the case

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may be, at the foreclosure sale and acquire, hold, lease, mortgage or otherwise encumber, and convey the Parcel or Sub-Unit. While a Parcel or Sub-Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Parcel or the other Sub-Units within the Sub-Unit's respective Parcel Association shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Parcel or Sub-Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) Effect of Sale or Transfer. Sale or transfer of any Parcel or Sub-Unit shall not affect the assessment lien or relieve such Parcel or Sub-Unit from the lien for any subsequent assessments. However, the sale or transfer of any Parcel or Sub-Unit pursuant to foreclosure of a first priority Mortgage shall extinguish the lien as to any installments of such assessments due more than six months prior to the Mortgagee's foreclosure. The subsequent Parcel Owner of the foreclosed Parcel or Sub-Unit Owner of the foreclosed Sub-Unit shall not be personally liable for assessments on such Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from all Parcel Owners or the other Sub-Units within the Sub-Unit's respective Parcel Association subject to assessment, including such acquirer, its successors and assigns.



If a Parcel Owner does not pay its assessments on time, the Association may foreclose its lien on the Parcel Owner's Parcel or on the Sub-Units within a Parcel, causing the Parcel or Sub-Units, as the case may be, to be sold to pay the past due assessments. If a Sub-Unit Owner does not pay its assessments on time, the Association may foreclose its lien on the Sub-Unit. The Association may also sue a Parcel or Sub-Unit Owner in court to recover past due assessments.

14.8. Exempt Property

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Founder as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility to which title has passed; and
- (c) Property owned by any Parcel Association for the common use and enjoyment of its members, or owned by all of the members of a Parcel Association as tenants-in-common.

In addition, both the Founder and the Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, hospitals, police or fire stations (or other similar public service uses), Parcels or Sub-Units conveyed to governmental authorities, or Parcels or Sub-Units owned by Persons qualifying for tax-exempt status under Section 501(c) or 509(c) of the Internal Revenue Code and used by such Persons for purposes listed in such sections of the Internal Revenue Code. Exemptions granted by the Founder shall be binding on the Association. Exemptions granted by the Association are subject to approval by the Founder during the Founder Control Period.

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14.9. Use and Consumption Fees

The Association may offer services or facilities for which it does not recover its costs through assessments under this chapter. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Parcel Owners, Sub-Unit Owners, and non-Owners).

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Chapter 15

Easements

The easements created or provided for in this chapter establish the rights of Parcel Owners to use the Common Area and create various rights for the benefit of Parcel Owners, the Founder, the Association, and others over property within Kaiaulu 'o Kaka'ako.

15.1. Easements in Common Area



An easement is one person's right to go onto the property of another.

The Founder hereby grants to each Parcel Owner and the permitted users of a Parcel a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The use of all or portions of the Common Area by the general public;
- (d) The holding of street fairs or festivals or other public or private events within Kaiaulu 'o Kaka'ako; and
- (e) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment;
 - (ii) suspend a Parcel Owner's right to use Common Area facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter; and

(iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Notwithstanding the Board's right to regulate use of the Common Area, no regulation or restriction shall unreasonably restrict or deny access to a Parcel by the Parcel Owner or other permitted users of the Parcel.

15.2. Easements Over Parcels

(a) Easements Over Sidewalks and Pathways. The Founder reserves the right to grant to the Association, each Parcel Owner, the permitted users of a Parcel, and their guests and invitees, non-exclusive rights and easements over each Parcel for the use and enjoyment of exterior sidewalks and pedestrian pathways located along public or private streets or which provide access to public use areas. The right to use any sidewalks or other pedestrian pathways on a Parcel shall be subject to reasonable regulation and control by the Parcel Owner. The Parcel Owner or any affected Parcel may prohibit access to and use of sidewalks and pedestrian pathways within or between Parcels that do not provide access to public use areas.

(b) Right to Access and Use Private Open Space Areas. The Founder reserves the right to designate certain open space areas within a Parcel as public use private open space ("**Public Use Private Space**") and to grant to the Association, for the benefit of the Association and its guests

Easements

and invitees, the non-exclusive right periodically to hold, sponsor, or otherwise conduct community events and programs on or in such areas. The Association's right to use Public Use Private Space may be subject to reasonable regulation by the Parcel Owner; provided, the Parcel Owner shall not be permitted to deny the Association's reasonable request for the use of Public Use Private Space for community purposes and the Board shall determine the reasonableness of any Parcel Owner regulations.

(c) Location of Easements. To the extent feasible, those areas within the Parcels subject to the easement rights described in this section shall be shown on a recorded plat or otherwise specifically described in a recorded instrument. During the Development and Sale Period, any easement of access across a Parcel may be relocated on the Parcel with the consent of the Founder and the Parcel Owner. Thereafter, the Association's consent is required to relocate such easement areas, which consent shall not unreasonably be withheld, conditioned, or delayed.

(d) Rights of General Public. Members of the general public visiting Kaiaulu 'o Kaka'ako shall be invitees or guests of the Association and the Parcel Owners for purposes of this section. The privileges afforded members of the general public under this section shall not be deemed to grant a vested right to the general public for use of and access to any portion of Kaiaulu 'o Kaka'ako or to require any consent or approval by members of the general public to modify, restrict, or rescind such privileges.

15.3. Right of Entry for Maintenance, Emergency, and Enforcement



The Association may come onto the exterior portions of a Parcel to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.

The Founder hereby grants to the Association a right of entry over and into the Parcels as necessary to enable the Association to fulfill its maintenance responsibilities and to exercise its enforcement rights under this Charter. The Association shall have the right, but not the obligation, to enter upon any Parcel, including any structure within a Parcel, for emergency, security, or safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Parcel Owner.

The Founder further reserves the right to grant and create perpetual, non-exclusive easements for access, ingress, and egress over any private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment and personnel; for U.S. Postal Service and other package delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to the Community; provided, such easements shall not authorize any such Persons to use private streets within the Community except while acting in their official capacities.

15.4. Easements for Utilities and Other Infrastructure

The Founder shall have the exclusive right to grant and record easements throughout Kaiaulu 'o Kaka'ako which benefit the Founder, the Association, the Parcel Owners, or other third parties and are reasonably necessary to:

(a) install Common Area improvements, utilities, and other infrastructure to serve Kaiaulu 'o Kaka'ako;

Easements

(b) install walkways, pathways, street lights, and signage to serve Kaiaulu 'o Kaka'ako;

(c) inspect, maintain, repair, and replace the Common Area, utilities, infrastructure, and other improvements described above; and

(d) access and read utility meters.

The Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

In addition, the Founder shall have the non-exclusive right and power to grant and record such other specific easements over the Parcels as it deems necessary to develop Kaiaulu 'o Kaka'ako. The location of any specific easements under this section shall be subject to the written approval of the owner of the burdened property, which approval shall not unreasonably be withheld, conditioned, or delayed.

15.5. Easements and Rights of Entry to Facilitate Development of Additional Property

The Founder hereby grants and reserves to itself, its employees, and its duly authorized agents, designees, successors, and assigns, a right of entry, and the right to grant temporary easements of access and use, over and upon all of Kaiaulu 'o Kaka'ako (but not through a structure) for all purposes reasonably related to making, constructing, and installing improvements to the Community and to the Additional Property (whether or not such property is made subject to this Charter).

Such right of entry and temporary easements include, but are not limited to (a) right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property; (b) slope and construction easements for each separate construction project on a Parcel or the Common Area; (c) easements for installation of drainage systems,

water and other utilities, erosion control, and storm and sanitary sewer (including the right to prune or remove trees, bushes, and shrubbery, to regrade soil, and to take any similar actions reasonably necessary); and (d) easements for mobilization and storage of construction equipment, materials, and supplies necessary for the construction of improvements.

15.6. Easements Between Adjacent Properties

(a) Easements of Encroachment.



An encroachment occurs when a building, fence, or other structure on a Parcel extends onto a neighboring Parcel. This section permits minor, inadvertent encroachments to remain.

The Founder hereby grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Easements of Support and Construction. The Founder reserves the right to grant reciprocal appurtenant easements over, under, across, and between adjacent Parcels and each Parcel and any adjacent Common Area for the installation and maintenance of underpinning or other footing and foundation support systems, and sheeting, shoring, and other forms of earth retention, including tiebacks and other required components. Such easements shall permit the temporary use of adjacent properties for the con-

Easements

struction and installation of such support systems and the permanent use of adjacent properties for the continued placement and maintenance of such systems.

The support system(s) benefiting any Parcel shall be designed, inspected during installation and upon completion of installation, and certified by a professional engineer registered in the State of Hawai'i. Any such support system also shall be subject to Reviewer approval in accordance with Chapter 5 and the approval of the Parcel Owner of any adjacent, burdened Parcel, which approval shall not unreasonably be withheld, conditioned, or delayed.

(c) Easements for Use of Air Space. The Founder reserves the right to grant reciprocal appurtenant easements over and between adjacent Parcels and each Parcel and any adjacent Common Area for the use of air space as reasonably necessary during construction and maintenance of Improvements on a Parcel. The permitted use of air space includes the right to install and use scaffolding, towers, and cranes, and the right to swing a crane and its load, over the air space of any adjacent Parcel or Common Area during the construction of Improvements on a Parcel and during the maintenance, repair, cleaning, and inspection of Improvements on a Parcel.

15.7. Right of Entry for Purposes of Inspection and Right to Correct



The Founder, or someone it designates, may enter onto any Parcel to inspect and correct problems with the Parcel. The Founder must give the Owner of the Parcel prior notice, and if entering an enclosed structure on the Parcel, obtain the Parcel Owner's prior consent unless it is an emergency.

During the Development and Sale Period, the Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any

structure, Improvement, fixture, or condition that may exist on any portion of the property within Kaiaulu 'o Kaka'ako, including Parcels, and a perpetual non-exclusive right and easement of access throughout Kaiaulu 'o Kaka'ako to the extent reasonably necessary to exercise such right.

15.8. Easements for Archaeological/Historical Sites

There are various archaeological and historical sites, including burial sites, within Kaiaulu 'o Kaka'ako ("**Sites**") that may require periodic access and maintenance. Some Sites have been identified; however, others may exist that have yet to be discovered. The Sites that have yet to be discovered may be located on Parcels.

In the event any Site is discovered on property within Kaiaulu 'o Kaka'ako, the owner of such property shall notify Kamehameha Schools of such Site within 10 days after its discovery and shall confer with Kamehameha Schools and the cultural or lineal descendants of Persons associated with the creation of the Site (to the extent such Persons may be identified and located through reasonable means) as to determining an appropriate method or means of caring for the Site.

Kamehameha Schools reserves for itself, its assigns, and any governmental authority having jurisdiction over such Sites a nonexclusive perpetual easement over the Common Area and Parcels as required or deemed necessary to: (a) travel to and from the Sites; and (b) inspect, evaluate, perform data recovery, maintain, and preserve the Sites from time to time. Such easement shall affect only such portions of the Common Area and Parcels as are reasonably necessary for such purposes.

Kamehameha Schools further reserves for itself and the Association the right to grant nonexclusive easements over the Common Areas and Parcels to: (a) travel to and from such Sites; (b)

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inspect, evaluate, perform data recovery, maintain, and preserve such Sites; and/or (c) perform traditional, cultural, and/or religious practices at such Sites, to any Person who is or may be entitled under federal and Hawai'i law to exercise any such rights.

Such easements shall affect only such portions of the Common Areas and Parcels as Kamehameha Schools or the Association, as the case may be, deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions, and restrictions that Kamehameha Schools or the Association may impose consistent with federal and Hawai'i law.

Kamehameha Schools reserves for itself and the Association the right to grant additional easements or modify existing easements under this section for Sites discovered in the future and to comply with federal and Hawai'i law or the requirements of any governmental or quasi-governmental entity that has jurisdiction over matters involving such Sites.

Due to the sensitive nature of this type of easement, the potential exists for conflict between persons using easements pursuant to this section and Parcel Owners. In order to avoid or eliminate any potential conflicts that may arise, an environment of mutual respect between Persons using the easements and Parcel Owners must prevail. Parcel Owners should exercise caution to avoid disruption of Sites and should take no action to prevent or hinder access to Sites. Persons utilizing easements pursuant to this Section should do so in a careful, considerate, and conscientious manner and take reasonable steps to avoid disturbing Parcel Owners and the Sites.

Neither the Association nor Kamehameha Schools shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Site or the designation or use of an easement related to such Site.

15.9. Exercise of Rights of Entry and Easements; Minimal Interference

Any Person exercising any right or easement described in this chapter shall minimize interference with the use and enjoyment of the Parcel or Common Area burdened by the easement. Persons exercising such right or easement shall be responsible for any damage caused to the Common Area or any Parcel as a result of their actions in connection with the exercise of such easement rights. Upon completion of any work pursuant to a right or easement, the Person exercising the right or easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. All work performed pursuant to a right or easement under this chapter shall be performed in a good and workmanlike manner in accordance with all applicable laws.

The exercise of rights or easements under this chapter shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of any Parcel. In the case of any right or easement permitting work to be performed on a Parcel, except in an emergency, entry onto the Parcel for such purpose shall be made only after reasonable notice to the Parcel Owner and the occupant of that portion of the Parcel for which entry is desired.

Chapter 16

Disclosures and Waivers

This chapter discloses some important information about Kaiaulu 'o Kaka'ako for the benefit of prospective purchasers of Parcels.

16.1. Facilities and Services Open to the Public

Certain facilities and areas within Kaiaulu 'o Kaka'ako shall be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: roads, sidewalks, parks, and other gathering areas. The Founder may dedicate such areas to the public or may designate such facilities and areas as open to the public prior to their being conveyed to the Association or a Parcel Owner, as applicable. Thereafter, the Board may designate portions of the Common Area as being available for public use at any time, subject to such regulations and restrictions on use as the Board may impose.

During the Development and Sale Period, no portion of Kaiaulu 'o Kaka'ako, including any Parcel, may be conveyed to a governmental entity or otherwise dedicated to public ownership or use without the Founder's written consent.

16.2. Safety and Security

Each Parcel Owner and occupant of a Parcel, and their respective guests and invitees, shall be responsible for their own personal safety and the safety of employees, and patrons, and guests, and the security of their property in Kaiaulu 'o Kaka'ako. As provided in Section 12.4, the Association may maintain or sponsor certain activities within Kaiaulu 'o Kaka'ako designed to promote or enhance the level of safety or security which each person provides for itself and its property. However, neither the Association nor the Founder shall in any way be considered

insurers or guarantors of safety or security within Kaiaulu 'o Kaka'ako, nor shall any be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to any portion of Kaiaulu 'o Kaka'ako, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Parcel Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of its Parcel, that the Association, the Board and Association committees, the Founder is not an insurer or guarantor of security or safety and that each Person within Kaiaulu 'o Kaka'ako assumes all risks of personal injury and loss or damage to property resulting from acts of third parties.

16.3. Changes in Master Plan

Each Parcel Owner acknowledges that Kaiaulu 'o Kaka'ako is a master planned community, the development of which is likely to extend over many years and the particulars of which are likely to change from time to time. In addition, each Parcel Owner acknowledges that the Master Plan in existence at the time of the recording of this Charter is subject to expiration 15 years from its effective date. As such, each Parcel Owner agrees that the Association shall not, without the Founder's prior written consent, engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within

Disclosures and Waivers

Kaiaulu 'o Kaka'ako; (b) changes in the Master Plan, including any extension of the time during which the Master Plan shall remain in effect; or (d) the creation or formation of a new Master Plan following the expiration of a previous or existing Master Plan.

16.4. Assignment of Rights and Obligations under the Master Plan

All or any of the rights and obligations granted or imposed under the Master Plan shall be freely assignable or transferable by Kamehameha Schools to third parties, including the Association, subject to such notice or consent as may be required under the Master Plan, and provided that the terms and conditions of the Master Plan shall be binding upon any such successors, assigns, or transferees.

16.5. View Impairment

Neither the Founder nor the Association guarantee or represent that any view over and across any property within or outside Kaiaulu 'o Kaka'ako will be preserved without impairment.

16.6. Contaminated Soils

Portions of Kaiaulu 'o Kaka'ako have been used in the past for industrial, manufacturing, or other similar purposes and may contain contaminated sub-surface soils that may require remediation prior to development activities taking place. Each Parcel Developer and each Parcel Owner shall be responsible for determining the existence of contaminated soils on its Parcel and for complying with such remediation requirements as may be imposed. The Founder, Founder Affiliates, and the Association shall have no obligation to remediate contaminated soils on any Parcel except as may otherwise be required under a separate governmental order, covenant, or agreement binding upon the Founder, Founder Affiliates, or the Association.

16.7. Public Entertainment Activities

Each Parcel Owner, by acceptance of a deed to a Parcel, acknowledges that Kaiaulu 'o Kaka'ako may include various public attractions and that public activities and events such as concerts, festivals, and similar activities and events, may be held within Kaiaulu 'o Kaka'ako. Each Parcel Owner acknowledges that such events and activities may result in nuisances, inconveniences, or hazards to persons and property on or in the vicinity of such events and activities. **Each Parcel Owner covenants, on behalf of itself, its heirs, successors, and successors-in-title, that it shall assume all risks associated with its use and ownership of property in the Community, including but not limited to, the risk of property damage or personal injury arising from or incidental to such public entertainment activities.**

16.8. Compliance with Governmental Permits and Approvals

Kaiaulu 'o Kaka'ako is subject to various governmental permits and approvals issued in connection with the development and use of the property. Each Parcel Owner shall be bound by the terms of all applicable permits and approvals and such permits and approvals shall apply and shall bind the Parcel Owners in accordance with their terms, notwithstanding anything to the contrary in the Governing Documents. Each Parcel Owner is responsible for determining which governmental permits and approvals apply to its Parcel and the extent to which they apply.

16.9. Initiation of Litigation by Association

The Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Parcel Owners and Sub-Unit Owners entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

Disclosures and Waivers

(a) initiated during the Founder Control Period with the Founder's approval;

(b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

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

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

This section shall not be amended unless such amendment is approved by the Founder, during the Development and Sale Period, and by the same percentage of votes necessary to institute proceedings.

Chapter 17

Rights of Lenders

In order to enhance each Parcel Owner's ability to obtain financing for the purchase and development of its property, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers, and guarantors of Mortgages in Kaiaulu 'o Kaka'ako. The provisions of this chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

17.1. Notices of Action

An institutional holder, insurer, or guarantor of a Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description and street address of the property to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Kaiaulu 'o Kaka'ako or which affects any Parcel on which there is a Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed to the Association by a Parcel subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Parcel or the Parcel Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed sanction to be taken against the Parcel on which the Eligible Holder has a Mortgage. In addition to notice, an Eligible Holder shall be given an opportunity to cure any violation in the same manner as a Parcel Owner under Section 8.2.

17.2. No Priority

No provision of this Charter or the By-Laws gives or shall be construed as giving any Parcel Owner or other party priority over any rights of the holder of any Mortgage on any Parcel in the case of distribution to such Parcel Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3. Notice to Association

Upon request, each Parcel Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

PART FIVE: COMMUNITY DEVELOPMENT

Chapter 18

Expansion of the Community

The Founder or the Association may expand the initial property submitted to this Charter as set forth in this chapter.

18.1. Expansion by Founder

From time to time, the Founder may submit to the terms of this Charter all or any portion of the Additional Property by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right unilaterally to expand Kaiaulu 'o Kaka'ako under this section expires 25 years after this Charter is recorded.

Nothing in this Charter shall require the Founder or any successor to submit the Additional Property to this Charter or to develop any of the Additional Property in any manner whatsoever; provided, prior to September 1, 2024, the Founder shall be required to submit to this Charter any property described in the Master Plan that the Founder (i) redevelops in a manner consistent with the Master Plan (*i.e.*, the adaptive re-use of a Parcel or the use of a Parcel as a Pre-Redevelopment Parcel shall *not* trigger the obligation to submit the Parcel to this Charter), or (ii) conveys to a third party. The submission of any redeveloped property shall occur no later than the date of completion of construction of the redevelopment. The submission of any property conveyed to a third party shall occur no later than the date of such conveyance.

18.2. Expansion by the Association

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Parcel Owners and Sub-Unit Owners representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

18.3. Additional Covenants and Easements

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the additional property described in the Supplement, in order to reflect the different character and intended use of such property.

Expansion of the Community

18.4. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability based upon an assignment of Equivalent Units, as described in Exhibit "D."

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Chapter 19

Additional Reserved Rights

This chapter identifies various reserved rights, which are in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the development and sale of property in the Community and to protect various property rights and other interests of Kamehameha Schools.

19.1. Withdrawal of Property

During the Development and Sale Period, the Founder may amend this Charter to remove all or any portion of Kaiaulu 'o Kaka'ako from the coverage of this Charter (a) to accommodate or otherwise respond to changes in, including termination of, the Master Plan or development plans generally; or (b) if such withdrawal is not unequivocally contrary to the overall general scheme of development established for Kaiaulu 'o Kaka'ako. Such amendment shall not require the consent of any Person other than the Parcel Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal. An amendment to withdraw property pursuant to this section shall be deemed not to materially adversely affect the title to any Parcel under Section 21.2(a).

19.2. Construction and Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property Founder or a Founder Affiliate owns, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or marketing and sale of Parcels. Such permitted facilities and activities shall include business offices, signs, flags

(whether hung from flag poles or attached to a structure), banners, balloons, sales offices, holding or sponsoring special events, and exterior lighting features or displays.

19.3. Right to Replat

During the Development and Sale Period, the Founder may replat property that it or any Founder Affiliate owns and convert Parcels that it or any Founder Affiliate owns into Common Area or the Founder may convert any Common Area that it or any Founder Affiliate owns into Parcels. The right of any Parcel Owner to replat its Parcel is subject to the Founder's approval during the Development and Sale Period and, thereafter, the Association's approval.

19.4. Right to Approve Changes in Community Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

19.5. Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Founder may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

19.6. Exclusive Rights to Use Name of Development

No Person shall use the name "Kaiaulu 'o Kaka'ako," any derivative of such name, any asso-

Additional Reserved Rights

ciated graphic elements, or any logo or depiction associated with Kaiaulu 'o Kaka'ako in any printed or promotional material without the Founder's prior written consent. However, Parcel Owners may use the name "Kaiaulu 'o Kaka'ako" in printed or promotional matter where such term is used solely to specify that particular property is located within Kaiaulu 'o Kaka'ako, and the Association shall be entitled to use the words "Kaiaulu 'o Kaka'ako" in its name.

19.7. Community Systems

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in Kaiaulu 'o Kaka'ako to install and operate such telecommunications and other technological systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other community systems services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

The Founder and/or the Association shall have the right, without obligation, to erect or permit the erection of an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Kaiaulu 'o Kaka'ako, should any master system or systems be utilized by the Association and require such exterior apparatus.

Notwithstanding the above, there is no guarantee or representation that any particular telecommunications or other community system will be made available.

In addition to the above, the Founder may enter into lease, license, or other agreements with

third parties permitting the installation within the Community of telecommunications-related improvements (*e.g.*, cellular telephone towers), without regard to whether such improvements are designed to serve the Community.

19.8. Right to Notice of Design or Construction Claims

During the Development and Sale Period, no Person shall retain an expert for the purpose of inspecting the design or construction of any structures or other Improvements within Kaiaulu 'o Kaka'ako in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder is first notified in writing and given an opportunity to meet with the owner of the property to discuss the Parcel Owner's concerns and conduct its own inspection.

19.9. Right to Transfer or Assign the Founder's Rights

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which the Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder and the transferee or assignee signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

Additional Reserved Rights

19.10. Rights Reserved to Kamehameha Schools

There is hereby reserved to Kamehameha Schools, and granted to its duly authorized agents, representatives, successors, assigns, licensees, and mortgagees, a perpetual, non-exclusive easement over Kaiaulu 'o Kaka'ako for the use, access, and development of the Parcels. This easement includes, but is not limited to, a right of ingress and egress over such property for construction of roads and for tying in and installation of utilities on such property.

Kamehameha Schools also shall have the non-exclusive right and power to grant and record specific easements, access rights, and/or rights-of-way as may be necessary, in its discretion, in connection with the orderly development and maintenance of the Parcels, including temporary, permanent, exclusive, non-exclusive, perpetual, and/or fixed in duration easements, access rights, and/or rights-of-way, and/or easements, access rights, and/or rights-of-way for storage, staging of construction and/or for construction parking.

In addition to the above, and in addition to rights reserved to the Founder which expire upon expiration of the Development and Sale Period or sooner, Kamehameha Schools reserves perpetual approval rights with respect to any of the following actions:

- any reduction in the Community-Wide Standard;
- any material amendment or modification of the Governing Documents; and
- the termination of this Charter.

Any of the above actions shall be void and of no force or effect without Kamehameha Schools' written consent or approval.

19.11. Exercise of Rights of Entry and Easements; Minimal Interference

Any Person exercising any right or easement described in this chapter shall minimize interference with the use and enjoyment of the Parcel or Common Area burdened by the easement. Persons exercising such right or easement shall be responsible for any damage caused to the Common Area or any Parcel as a result of their actions in connection with the exercise of such easement rights. Upon completion of any work pursuant to a right or easement, the Person exercising the right or easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. All work performed pursuant to a right or easement under this chapter shall be performed in a good and workmanlike manner in accordance with all applicable laws.

The exercise of rights or easements under this chapter shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of or access to or within any Parcel. In the case of any right or easement permitting work to be performed on a Parcel, except in an emergency, entry onto the Parcel for such purpose shall be made only after reasonable notice to the Parcel Owner and the occupant of that portion of the Parcel for which entry is desired.

19.12. Termination of Rights

The Founder or Kamehameha Schools, as applicable, may voluntarily terminate any of their rights by recording a written statement specifying such intent to terminate.

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

Chapter 20

Changes in the Common Area Owned by the Association

Those portions of the Common Area that the Association owns are subject to change. This chapter explains the procedures for partition of the Common Area, condemnation of the Common Area, and the general transfer or dedication of the Common Area.

20.1. Condemnation



A governmental entity such as a town, county, or state has the power to condemn property for its own uses but generally has to pay the value of the property to do so.

If any part of the Common Area that the Association owns is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 20.3, each Parcel Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be used as the Board determines.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on available remaining portions of the Common Area, unless within 60 days after such taking the Founder, during the Founder Control Period, and Parcel Owners and Sub-Unit Owners representing at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 11.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.3.

20.2. Partition



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as otherwise specifically permitted in this Charter, the Common Area owned by the Association shall remain undivided, and no Person shall bring any action to partition any portion of such Common Area without the written consent of all Parcel Owners. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 20.3.

20.3. Transfer or Dedication of Common Area

During the Development and Sale Period (a) the Founder may dedicate roadways within Kaiaulu 'o Kaka'ako and other portions of the Common Area that it or a Founder Affiliate owns to the City and County of Honolulu, Hawai'i, or to any other local, state, or federal governmental or quasi-governmental entity, and (b) the Association, upon the Founder's request and without a

Changes in the Common Area Owned by the Association

vote of the membership, shall dedicate roadways and other Common Areas that it owns to the City and County of Honolulu, Hawai'i, or to any other local, state, or federal governmental or quasi-governmental entity, as applicable.

The Association also (a) may dedicate portions of the Common Area that it owns to the City and County of Honolulu, Hawai'i, or to any other local, state, or federal governmental or quasi-governmental entity; (b) may subject the Common Area that it owns to a security interest; or (c) may transfer or convey any Common Area that it owns upon the written consent of Parcel Owners and Sub-Unit Owners representing at least a majority of the total votes in the Association.

The proceeds from the sale or mortgaging of Common Area shall be an asset of the Association to be used as the Board determines.

No conveyance or encumbrance of Common Area may deprive any Parcel of rights of access or support.

Chapter 21

Termination and Amendment of Charter

This chapter sets out procedures by which the Founder, the Board, or the Parcel Owners may amend this Charter to address changes in the plans, needs, or desires of Kaiaulu 'o Kaka'ako.

21.1. Term and Termination

This Charter is intended to be of perpetual duration, unless Parcel Owners and Sub-Unit Owners representing 80% of the total votes in the Association and the Founder (during the Development and Sale Period) direct the Board to execute and record a document stating that this Charter is terminated. In such case, this Charter shall terminate on the date specified in the termination document.

Notwithstanding the above, if any interest created by this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, such interest shall expire 90 years from the date of recording of this Charter.

This section shall not permit termination of any easement created in this Charter for the benefit of the Founder and/or Kamehameha Schools without the consent of the Founder or Kamehameha Schools, as applicable. This section shall not permit termination of any easement created by or pursuant to Section 15.4 of this Charter without the consent of the utility or service provider holding such easement. Other easements created in this Charter shall continue in effect following termination of this Charter unless the recorded document memorializing the termination of this Charter otherwise specifically provides that the easement is terminated.

21.2. Amendment

(a) By Founder. Until termination of the Development and Sale Period, the Founder may

unilaterally amend this Charter for any purpose; provided, no amendment that would materially adversely affect the title to any Parcel shall be binding upon such Parcel unless the Parcel Owner shall consent in writing. Without limitation, the Founder's right to amend shall include the right to amend to accommodate or correspond to material changes in the Master Plan and, upon expiration of the Master Plan, the right to impose any governmental restriction or requirement previously imposed under the Master Plan.

(b) By the Board. The Board may unilaterally amend this Charter if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels; (iii) to satisfy the requirements of any local, state, or federal governmental agency; or (iv) to clarify or correct technical, typographical, or scrivener's errors. However, no amendment under this paragraph that would adversely affect the title to any Parcel shall be binding upon such Parcel unless the Parcel Owner shall consent in writing.

(c) By Owners. Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Parcel Owners and Sub-Unit Owners representing 67% of the total votes in the Association. In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Terminations and Amendment of Community Charter

If the percentage of votes necessary to amend a specific clause is not specified, the percentage of votes required for action shall be 67%.

(d) *Validity and Effective Date.* No amendment may remove, revoke, or modify any right or privilege of the Founder without the written consent of the Founder (or the assignee of such right or privilege).

No amendment may remove, revoke, or modify any right or privilege of Kamehameha Schools without the written consent of Kamehameha Schools.

If a Parcel Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Parcel Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Parcel Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or it shall be presumed that such amendment was validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

(e) *Exhibits.* Exhibits "A," "B," and "D" are incorporated by this reference, and this chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this section. Exhibit "E" is attached for informational purposes and may be amended as provided in that exhibit or in the provisions of this Charter that refer to such exhibit.

THIS COMMUNITY CHARTER FOR KAIAULU 'O KAKA'AKO is made and executed by the undersigned Founder this ____ day of _____, 20__.

THE FOUNDER:

KAMEHAMEHA SCHOOLS,

a _____

By: _____

Name: _____

Its: _____

STATE OF HAWAI'I)
) ss.
COUNTY OF HONOLULU)

On this ____ day of _____, 20__, before me appeared _____, to me personally known/proved to me on the basis of satisfactory evidence, who, being, by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Name

Notary Public, State of Hawai'i

My commission expires: _____

EXHIBIT "A"

Land Initially Submitted

EXHIBIT "B"

Additional Property

Any and all property lying and being in the City and County of Honolulu, Hawai'i, that is within the Kakaako Community Development District and being bounded by those certain streets known (as of the date of recording of this Charter) as King Street, Piikoi Street, and Punchbowl Street, and by the Pacific Ocean.

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner of the applicable property by filing a Supplement in accordance with Chapter 18.

EXHIBIT "C"

Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance. It is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove actions or items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the Governing Documents. As such, while something may be approved or permitted under one set of circumstances, the same thing may be disapproved under a different set of circumstances. Exercising discretion in approvals or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any circumstances it deems appropriate.

The following shall apply to all of Kaiaulu 'o Kaka'ako until such time as modified pursuant to this Charter.

1. **General.** Kaiaulu 'o Kaka'ako shall be used only for purposes consistent with the Master Plan, this Charter, and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Kaiaulu 'o Kaka'ako:

(a) Parking any vehicles in designated "no parking" areas, or parking of mobile homes, recreational vehicles, boats and other watercraft, and trailers in areas other than those designated for such purposes; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to any Parcel or the Common Area and temporary marketing and construction trailers are permitted in areas the Founder or the Board designates. Keeping stored or inoperable vehicles anywhere within Kaiaulu 'o Kaka'ako is prohibited, except that vehicles may be stored in assigned parking spaces in residential developments;

(b) Raising, breeding, or keeping animals, except that a reasonable number of dogs, cats, or other usual and common household pets may be kept in a residential dwelling. Animals brought into Kaiaulu 'o Kaka'ako shall be kept on a leash or otherwise confined in a manner acceptable to the Board. Any animal which is permitted to roam free, or, in the Board's sole discretion, makes objectionable noise, endangers the health or safety of any individual or other animal, or constitutes a nuisance or inconvenience shall be removed upon the Board's request. If the animal's owner fails to honor such request, the Board may remove or provide for the removal of the animal from Kaiaulu 'o Kaka'ako;

(c) Any activity that emits foul or obnoxious odors or creates excessive noise or other conditions that tend to disturb the peace or threaten the safety of others, each as determined in the Board's reasonable discretion;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures;

(f) Any noxious or offensive activity which in the Founder's or the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or other portions of Kaiaulu 'o Kaka'ako;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of permitted construction;

(h) Use and discharge of firecrackers and other fireworks, except that the Association may sponsor or otherwise permit structured and supervised fireworks displays from time to time;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored for emergency purposes and for the operation maintenance vehicles, generators, and similar equipment;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Kaiaulu 'o Kaka'ako or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution; and

(m) Any modification of any thing, permanently or temporarily, on any Parcel, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, fences of any kind, and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Parcels, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property.

(n) Hanging garments, towels, laundry, signs, or other objects from, and the accumulation or excessive storage of items on, balconies.

EXHIBIT "D"

Allocating Liability for Assessments and Allocating Votes Among Parcels

1. **Assignment of Equivalent Units.** For purposes of allocating Common Expenses and Service Area Expenses among Parcels, and for purposes of allocating votes in the Association among Parcels, each Parcel shall be assigned Equivalent Units. The number of Equivalent Units for each Parcel is determined in accordance with the table set forth below based upon the size of the Parcel and the land use classifications within the Parcel, including all uses within the Parcel, as determined by actual uses.

<u>Land Use Classification*</u>	<u>Equivalent Units*</u>
All Parcels, developed or undeveloped – without regard to use (excluding Common Areas and Exempt Property)	150 per acre of land (rounded up or down to the nearest acre) **
Pre-Redevelopment Parcel	150 per acre of land (rounded up or down to the nearest acre) (no additional Equivalent Units assigned for structures on a Pre-Redevelopment Parcel) **
Retail and service establishments, including, without limitation, banks (including ATM's) and other financial services and institutions	1 per 150 square feet of gross floor area***
Restaurants	1 per 150 square feet of gross floor area
Art galleries, museums, places of worship, libraries, nonprofit educational, research, or cultural institutions	0.15 per 150 square feet of gross floor area
General Office	1 per 150 square feet of gross floor area
Residential units (single family attached, detached, and condominium)	1 per dwelling unit****
Multi-family rental apartments	1.5 per apartment dwelling unit
Industrial Use	0.15 per 150 square feet of gross floor area
Other uses	*****
Exempt property (or as provided in Section 14.8)	0

* Allocations based upon the acreage of the Parcel shall be made at the time a Parcel is submitted to this Charter. Additional points based on actual uses will be allocated to each Parcel upon the earlier of (i) the issuance of a certificate of occupancy for the Improvement containing, or to contain, such use, or (ii) the date upon which the intended use commences. In the case of a change in use, the new allocation shall

be made as of the date upon which the new use actually commences. A "certificate of occupancy" is that certificate or approval issued by the City and County of Honolulu, Hawai'i, as applicable as a final condition of occupancy or use of an Improvement on a Parcel.

****** With the exception of Pre-Redevelopment Parcels, allocations based on Parcel acreage shall apply in addition to allocations based on gross floor area or number of units. Pre-Redevelopment Parcels are assigned Equivalent Units based on acreage of the Parcel only, without regard to structures. A Pre-Redevelopment Parcel is a Parcel designated in writing by the Founder as one for which the intent ultimately is to remove or functionally alter the existing improvements on the Parcel for use in a manner designed to comply with the Master Plan. Alternatively, a Parcel designated in writing by the Founder as one for which the intent is to retain existing structures indefinitely, with or without substantial alteration, but change the use to comply with the Master Plan shall receive an allocation based upon acreage and improvements on and use of the Parcel. The Founder, at any time and from time to time, may make and may change, in writing, such designations.

******* "Gross floor area" shall be the area within an enclosed structure intended for occupancy or other use, as determined by a licensed engineer or architect. To the extent applicable, the definition of "gross floor area" set forth in the applicable zoning ordinance pertaining to Kaiaulu 'o Kaka'ako, as may be amended from time to time, shall be followed in making any determination of the gross floor area of a use within a Parcel. For calculation purposes, square footages shall be rounded up or down to the nearest multiple of 150 (subject to a minimum square footage, after rounding, of 150 square feet).

******** A dwelling unit shall be the structure or the portion of a structure designed for occupancy by a single household (*e.g.*, a condominium unit or a single rental apartment unit).

********* During the Development and Sale Period, the Founder unilaterally may amend this Exhibit "D" to create additional Land Use Classifications and to assign Equivalent Units to such new use.

The Founder shall make all determinations of land use classification during the Development and Sale Period. Thereafter, the Board shall determine land use classifications; provided, the land use classification of a Parcel or any portion of a Parcel hereunder shall not be changed once established unless there has been a change in predominant use. The land use classification of all or a portion of a Parcel (and, as such, the Equivalent Units assigned to the Parcel) shall change upon (a) the redevelopment of a Pre-Redevelopment Parcel, and (b) the change in predominant use of all or a portion of a Parcel which is not a Pre-Redevelopment Parcel.

2. Calculating Equivalent Units - Examples.

- A 2-acre Pre-Redevelopment Parcel containing any number of structures and uses would be assigned 2 Equivalent Units (2 acres X 150 = 300).
- A 2-acre Parcel containing 10,000 square feet of retail use and 10,000 square feet of restaurant use would be assigned 434 Equivalent Units (2 acres X 150 = 300; 10,000 square feet of retail/150 = 67; 10,000 square feet of restaurant/150 = 67).
- A 2-acre Parcel containing a 150-unit residential condominium project use would be assigned 450 Equivalent Units (2 acres X 150 = 300; 150 units X 1 = 150).

3. **Calculation of Assessments.** The share of any Common Expenses to be assessed by the Association against a Parcel shall be represented by a fraction, the numerator of which is the number of Equivalent Units assigned to the particular Parcel and the denominator of which is the total number of Equivalent Units assigned to all Parcels subject to such assessment. Such fraction shall be multiplied by the total dollar amount of the Common Expense budget assigned to all Parcels in order to determine the dollar amount of the assessment to be levied against the particular Parcel.

4. **Calculation of Votes.** Each Parcel shall be allocated the number of votes corresponding to the number of Equivalent Units within the Parcel.

5. **Computation by Board.** The land use classification and number of Equivalent Units assigned to each Parcel, and the share of assessments (stated as a percentage) to be levied on each Parcel subject to assessment, shall be computed at least annually by the Board. If a use within a Parcel changes during the fiscal year, the Board shall be authorized to adjust the assessment against the Parcel effective with such change in use, but the Board need not reallocate assessments against all Parcels to take into account such change until the next annual budget. Notice of the percentages for each Parcel (including a summary of the computations) shall be sent to each Parcel Owner together with the notice of the assessment.

In the event that additional real property is made subject to this Charter during the Association's fiscal year, for computation of Equivalent Units, the Board shall recompute assessment percentages and votes for each Parcel and send notice of such recomputed percentages to each Owner; provided, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

EXHIBIT "E"

By-Laws of Kaiaulu 'o Kaka'ako Owners Association