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91-155979

REGISTRATION DIVISION  
NOV 13 1991

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S. FUJIKAWA, REGISTRAR

no

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

C. Brewer Properties Inc.

P.O. Box 1826  
Honolulu, HI 96805

TG Brewer

45 (15)

ANNEXING DECLARATION AND  
DECLARATION OF RESTRICTIVE COVENANTS

THIS ANNEXING DECLARATION AND DECLARATION OF RESTRICTIVE COVENANTS is made as of the 7<sup>th</sup> day of November, 1991, by C. BREWER PROPERTIES, INC., a Hawaii corporation, whose principal place of business is 827 Fort Street, Honolulu, Hawaii 96813, and whose post office address is P. O. Box 1826, Honolulu, Hawaii 96805, hereinafter referred to as the "Declarant",

W I T N E S S E T H :

WHEREAS, Declarant is the fee simple owner of those certain parcels of land situate at Kalihiwai and Kilauea, District of Hanalei, Island and County of Kauai, State of Hawaii, more particularly described as Lots 1 through 19, inclusive, 21, 23, 24 and 26 through 30, inclusive, of the Kalihiwai Ridge, Phase II Subdivision, as shown on File Plan 2053, filed in the Bureau of Conveyances of the State of Hawaii (the "Annexed Property"); and

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WHEREAS, Declarant is also the Declarant under that certain Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated October 3, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22452 at Page 429, as supplemented and amended, including, without limitation, as supplemented and amended by Correction to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated July 5, 1990, but effective October 3, 1988, recorded as Bureau of Conveyances Document No. 90-104733 (the "Declaration"), which establishes a general plan of covenants, conditions, restrictions and obligations for all real property which may from time to time be subject thereto (the "Covered Property"); and

WHEREAS, pursuant to Article XII of the Declaration, the Declarant may annex to the Covered Property up to 3,000 acres of land on the Island of Kauai in the vicinity of the Real Property (as defined in the Declaration), and thereby subject such Annexed Property to the Declaration, upon the filing by the Declarant in the Bureau of Conveyances of the State of Hawaii of an annexing declaration containing a legal description of the land and setting forth such additional or different limitations, covenants, conditions and restrictions, if any, as are applicable to such additional land, and providing that the land so annexed shall at all times be owned, held, used and occupied, subject to the provisions of the Declaration, and stating the maximum number of Single Family Residences (as defined in the Declaration) which may be constructed on each Lot (as defined in the Declaration) so annexed; and

WHEREAS, the Annexed Property is part of the property which may be annexed by the Declarant pursuant to the terms of the Declaration, and the annexation thereof to the provisions of the Declaration will be in conformance with the Declaration; and

WHEREAS, Declarant desires and intends that the Annexed Property shall be annexed pursuant to Article XII of the Declaration, and that all owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Annexed Property or any part thereof shall at all times enjoy the benefits of and shall hold their interests subject to the rights, easements, covenants, restrictions and obligations set forth in the Declaration and hereinafter set forth, all of which are hereby declared to be in furtherance of the general plan of development of Kalihiwai Ridge; and

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WHEREAS, Declarant also desires and intends that Lot 3, as shown on File Plan 2053 (the "Lake Lot"), and Lots 4 through 13, inclusive, as shown on File Plan 2053 (the "Lakefront Lots"), shall be subject to certain additional limitations, covenants, conditions and restrictions which shall be binding upon all persons holding or acquiring any right, title or interest in or to the Lake Lot or the Lakefront Lots, or holding or acquiring any easement, license or right to use the Lake Lot or the Lakefront Lots, and which shall inure to the benefit of Declarant and also, upon conveyance of the Lake Lot to the Kalihiwai Ridge Community Association and thereafter so long as the Lake Lot is owned by the Kalihiwai Ridge Community Association, to the benefit of the Kalihiwai Ridge Community Association and each person who becomes an owner of any part of the Covered Property, and each successor in interest of such owner, all of which are hereby declared to be in furtherance of the general plan of development of Kalihiwai Ridge;

NOW, THEREFORE, Declarant, for the purposes hereinabove set forth, hereby declares as follows:

1. Annexation. All of the Annexed Property and each part thereof and all improvements constructed thereon is hereby annexed pursuant to Article XII of the Declaration and shall, at all times, be owned, held, used and occupied, subject to the provisions of the Declaration, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the Annexed Property and be binding upon all parties having any right, title or interest therein or in any part thereof, their heirs, successors, personal representatives and assigns, and shall inure to the benefit of each owner; provided, however, that the Lake Lot shall be subject to the restrictions set forth in the Declaration only during such time as, and for so long as, such Lot is owned by or leased to the Kalihiwai Ridge Community Association.

2. Designation of Use. Lots 1, 2, 4 through 19, inclusive, 21, 23, 24 and 26 through 30, inclusive, as shown on File Plan 2053, shall be improved with no more than the maximum number of Single Family Residences indicated in Exhibit A attached hereto and made a part hereof. The Lake Lot is hereby designated as a Lake Lot under the Declaration during such time as, and for as long as, such Lot is owned by or leased to the Kalihiwai Ridge Community Association.

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The use of said Lots 1, 2, 4 through 19, inclusive, 21, 23, 24 and 26 through 30, inclusive, shall be subject to the use rights and restrictions set forth in Article VI of the Declaration.

The use of the Lake Lot shall be subject to the use rights and restrictions set forth in Article VII of the Declaration, during such time as, and for so long as, such Lake Lot is owned by or leased to the Kalihiwai Ridge Community Association.

3. Commencement of Assessments. The assessments described in the Declaration, to the extent that such assessments are applicable to the Annexed Property, shall commence with regard to the Annexed Property on the first day of the first calendar month after recordation of this Annexing Declaration in the Bureau of Conveyances of the State of Hawaii.

4. Submission to Declaration. Declarant hereby submits the Annexed Property to the Declaration and declares that the Annexed Property shall be subject to the covenants, conditions and restrictions of the Declaration. The definitions set forth in the Declaration shall apply to this Annexing Declaration.

5. Additional Restrictions Applicable to the Lake Lot and to Lakefront Lots. Notwithstanding any provision to the contrary contained herein or in the Declaration, effective immediately and so long as the Lake Lot is owned by Declarant, and thereafter so long as the Lake Lot is owned by or leased to the Kalihiwai Ridge Community Association, but terminating at such time as the Kalihiwai Ridge Declaration shall expire or the Lake Lot shall no longer be used for recreational purposes for all "Members" of the Kalihiwai Ridge Community Association (as defined in the Declaration), whichever shall first occur, the owners of the Lakefront Lots shall not be permitted to moor, anchor or store their boats on any portion of the Lake Lot or to construct, make, place or maintain any fence, bulkhead, groin, dock, pier, wharf, breakwater, canal, slip, landing, piling, cut, fill, dredging, boathouse, mooring facility or other Improvement on any portion of the Lake Lot. Each such owner, however, shall be entitled to, and the Lake Lot shall be subject to, an exclusive right and easement, effective immediately, and so long as the Lake Lot is owned by Declarant and thereafter so long as the Lake Lot is owned by or leased to the Kalihiwai Ridge Community Association but terminating at such time as the Kalihiwai Ridge Declaration shall expire or the Lake Lot

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shall no longer be used for recreational purposes for all Members of the Kalihiwai Ridge Community Association, whichever shall first occur, for the enjoyment and use of that portion of the Lake Lot immediately adjoining such owner's Lot, within the area bounded by such owner's boundary along the Lake Lot, extensions of such owner's side yard boundaries into the Lake Lot and the water's edge within the Lake Lot. During the aforesaid period, no other person or owner shall be entitled to park, moor, or store any vehicle or boat, or camp or picnic within such area, except with such owner's consent; provided, however, that the Lake Lot and all such areas shall be subject to all easements, rights and interests as appear of record at the time of conveyance of the Lake Lot or any such Lot adjoining the Lake Lot by Declarant and such other reservations and conditions as Declarant at the time of such conveyance may reserve or impose. In addition, notwithstanding anything contained herein or in the Declaration to the contrary, effective immediately and so long as the Lake Lot is owned by Declarant, and thereafter so long as the Lake Lot is owned by or leased to the Kalihiwai Ridge Community Association, the Lake Lot and all rights to use the Lake Lot shall be subject to the use rights and restrictions set forth in Article VII of the Declaration. The additional limitations, covenants and restrictions contained in this Paragraph 5 shall be binding upon all persons holding or acquiring any right, title or interest in the Lake Lot or the Lakefront Lots or acquiring any easement, license or right to use the Lake Lot or the Lakefront Lots and shall inure to the benefit of Declarant, and also, upon the conveyance of the Lake Lot to the Kalihiwai Ridge Community Association and thereafter so long as the Lake Lot is owned by the Kalihiwai Ridge Community Association, to the benefit of the Kalihiwai Ridge Community Association and each person who becomes an owner of any part of the Covered Property and each successor in interest of such owner.

6. Reservation of Rights. Notwithstanding anything contained herein to the contrary, Declarant hereby expressly reserves and excepts unto itself and its successors and assigns, and upon the conveyance of the Lake Lot shall be entitled to reserve unto itself and its successors and assigns, the following:

(a) Easements for utility, access, drainage, water storage, reservoir, recreation, communication, landscaping, irrigation and all other purposes over, under, across, along, upon and through the entire Lake Lot and any easements now or hereafter designated thereon, together with the right to designate such

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additional easements affecting the Lake Lot as the Declarant or its successors or assigns may deem necessary or desirable, and together with the right of reasonable access within, to and from the Lake Lot and all such easements for the exercise of all such easement rights, with the right to grant the same to the State of Hawaii, County of Kauai, or other appropriate governmental agency, or to neighboring landowners, associations of neighboring landowners, or to any public or private utility or other corporation, partnership, individual or entity, easements for any such purposes within the Lake Lot or any such designated easements, upon such terms as the Declarant deems necessary or desirable.

(b) All water and water rights within and/or appurtenant to the Lake Lot, including, without limitation, all surface and subterranean waters on and under the Lake Lot, and all rights, if any, to wells, springs, streams, and percolating waters located on or under the Lake Lot, with the right to assign and transfer any such water and/or water rights to the State of Hawaii, County of Kauai, Kilauea Irrigation Co., Inc., Kilauea Agronomics, Inc. or other appropriate governmental agency, or any public or private utility or other corporation, partnership, individual or entity; provided, however, that in the exercise of said rights, Declarant, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land of the Lake Lot or any improvements thereon.

(c) As appurtenant to the lands which are located adjacent to or in the vicinity of the Lake Lot and which are now owned or used or hereafter acquired and used by Declarant, its successors and assigns, in agricultural operations, the unrestricted right to engage in any type of farming operation, including, but not limited to open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides and/or herbicides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations

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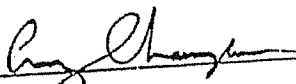
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may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the Lake Lot.

IN WITNESS WHEREOF, this Annexing Declaration is executed as of the date set forth above.

C. BREWER PROPERTIES, INC.

BY   
Its ~~Serio~~ Vice President

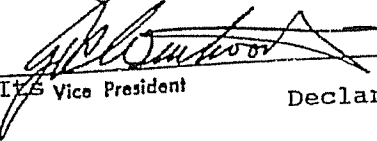
BY   
Its Vice President Declarant

Exhibit A: Maximum Number of Residences for Each Lot

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

On this 7th day of November, 1991 before me appeared CRAIG CHAMPION and G. C. WENTWORTH, to me personally known, who, being by me duly sworn, did say that they are Senior Vice President and Vice President respectively, of C. BREWER PROPERTIES, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said officers acknowledged the instrument to be the free act and deed of said corporation.

Stephanie A. Marques h.s.  
Notary Public  
State of Hawaii

My commission expires: FEB. 10, 1992



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KALIHIWAI RIDGE - PHASE II  
ALLOWABLE FARM DWELLING UNITS

New Lot Designation (7/19/91 Map)	Acres	Allowable FDU
1	17.248	5
2	13.696	3
3 (Lake Lot)	58.008	0
4	10.000	2
5	8.000	2
6	8.194	2
7	10.955	3
8	11.116	3
9	8.553	2
10	13.056	3
11	6.502	1
12	10.069	2
13	10.837	3
14	10.837	3
15	10.849	3
16	33.925	5
17	16.189	5
18	8.832	3
19	25.348	5
20 (Roadway Lot)	30.373	5
21	<del>3.338</del>	<del>0</del>
22	29.629	5
23	<del>324.631</del>	<del>5</del>
24	50.575	5
25 (Roadway Lot)	27.295	5
26	<del>10.236</del>	<del>0</del>
27	28.811	5
28	22.002	5
29	35.903	5
30	25.000	5
	26.926	5
	TOTAL	102

AGREED AND ACCEPTED THIS 9<sup>th</sup> TH DAY OF August, 1991.

*Keith D. Ditt*  
PLANNING DEPARTMENT

Exhibit A