Kukui'ula
SOUTH SHORE, KAUA'I

CONSTRUCTION COMPLIANCE AGREEMENT

By and between

_____ ("Member")

and

BBCPKD (BBCP Kukui`ula Development, LLC)

This Construction Compliance Agreement ("Agreement") is made by and between the BBCPKD (BBCP Kukui`ula Development, LLC), a Hawaii limited liability company, acting through the Kukui`ula Design Review Committee ("DRC") of the Kukui'ula Community Association (the "Association"), designated to act on its behalf and the Member named above.

RECITALS

WHEREAS, Member is the record owner of real property located in the community of Kukui`ula, County of Kaua`i, State of Hawaii, described as Parcel _____, Lot _____, TMK No. _____, also known by the street address as _____("Property"); and,

WHEREAS, Member acknowledges that such Property is subject to certain governance structure with its standards and procedures administered by BBCPKD (BBCP Kukui`ula Development, LLC), a Hawaii limited liability company, ("Declarant"), as set forth in that certain Second Amended and Restated Community Charter for Kukui`ula (**"Charter"**), recorded on August 5, 2015, in the records of the Bureau of Conveyances of the State of Hawaii together with all amendments and supplements thereto, and as such this Charter may be amended and/or supplemented from time to time; and,

WHEREAS, Member acknowledges that such Charter authorizes the promulgation of certain Design Guidelines (which includes the rules associated with installation and/or construction of Improvements (the "Construction Rules"), and all references hereafter to the Design Guidelines shall include the Construction Rules), heretofore adopted by the Declarant, and that all further references in this Agreement to the Charter shall be deemed to include all such Design Guidelines; and

WHEREAS, the Declarant holds exclusive authority to review and act upon all applications for review of proposed Improvements (as defined in the Charter) and to amend the Design Guidelines including any additional provisions regarding the construction of Improvements within Kukui`ula, and the Declarant has designated certain persons to act on its behalf to implement certain areas of the Declarant's administration and enforcement authority under the Charter, (the "DRC"), including but not limited to provisions specifically applicable to the planning, design, construction and completion of Improvements and modifications thereof on real property subject to the Declarant's jurisdiction, and issues incidental thereto; and,

WHEREAS, the DRC requires of all Members, as a condition prior to commencing construction activity on any property (including landscaping) within the DRC's jurisdiction, both a Certificate of Charter Compliance and an executed Construction Compliance Agreement by which the Member agrees to comply with the Charter and the Design Guidelines, and to furnish a monetary deposit to secure Member's compliance with same.

AGREEMENT

NOW THEREFORE, in consideration of the following mutual promises and agreements and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant (through its authorized agent, the DRC and the DRC Representative) and Member agree as follows:

1. Proposed Construction Activity and Certificate of Charter Compliance.
   (a) The term "Construction Activity" as used in this Agreement shall mean all phases and aspects of the construction of Improvements, modifications and landscaping proposed by the Member and his/her Certificate of Charter Compliance and all materials submitted therewith to the DRC (see subparagraph 1b). Member's signature below on this Agreement and provision of the Construction Deposit defined and described below in paragraph 5 are preconditions of DRC approval for Member's commencement of Construction Activity on the Property.
   (b) The term "Certificate of Charter Compliance " as used in this Agreement shall include all materials required to be submitted to the DRC under the design review process described in the Design Guidelines, including but not limited to a topographic survey of the Property, site plans, civil engineering plans, geotechnical report, floor plans, roof plans, landscape plans, drawings of exterior elevations, drawings of building sections, building height calculations, exterior finish details, digital models, and any other documents or materials required by the DRC.
2. Compliance by Member.
   (a) Member acknowledges and agrees its Property is subject to the jurisdiction of the DRC as described in the Charter. Member agrees to fully and timely comply with the Charter, its Certificate of Charter Compliance approved by the DRC, the Construction Rules, and all terms and conditions of this Agreement.
   (b) Member has retained or intends to retain_____as the contractor for the Construction Activity proposed. Members shall provide a copy of this Agreement to such general contractor and Member agrees that the terms and conditions of this Agreement shall be incorporated by specific reference into Member's contract(s) with its contractor.
   (c) Member is responsible for ensuring that the contractors and subcontractors on the Project are licensed in the State of Hawaii and in good standing with the applicable licensing authority.
3. Enforcement of Compliance by the DRC.
   (a) Authority to enforce compliance. Member acknowledges that the DRC, including its employees, consultants, and agents, is the authorized agent of the Declarant to administer and enforce the Charter, the Certificate of Charter Compliance, the Construction Rules, this Agreement and any and all other agreements in connection with Member's Construction Activity.
   (b) Determination of noncompliance. The DRC, on its own initiative or in response to complaint or report filed by any person, is authorized to determine whether Member's Construction Activity is in violation of, or not compliant with, the Charter, the Certificate of Charter Compliance, the Construction Rules, and this Agreement.
   (c) Remedies and Fees for noncompliance. The DRC is authorized to enforce Member's compliance with the Charter, the Certificate of Charter Compliance, the Construction Rules, and this Agreement by imposing one or more monetary fees upon Member for violations of noncompliance (including deduction of unpaid fee, as well as associated DRC administrative and legal costs, from Member's Construction Deposit), by exercising a reserved right of entry on the Property to remove nonconforming Improvements, by excluding Member's agents from entry

to the Kukui`ula community under the Declarant's jurisdiction, or by pursuing all other available legal and/or equitable remedies. Such remedies are cumulative, not exclusive. The DRC may, in its discretion and after notice to Member, declare each day after a violation or noncompliance continues as a separate violation or event of noncompliance.

(d) Notice of noncompliance. If the DRC determines that a violation of, or noncompliance with, the Charter and/or the Certificate of Charter Compliance and/or this Agreement has occurred in connection with Member's Construction Activity, the DRC (or its authorized employee, consultant, or agent, which may include the DRC) will provide Member with notice ("Notice") of the violation (delivered to Member as provided in this Agreement for "Notices") identifying the sanction to be imposed or remedy to be pursued and the timeline in which the remedy shall be completed, including payment of fees, if any.

(e) Recorded Notice of Noncompliance. Member acknowledges and agrees that if the DRC imposes a fee or other sanction against the Member as described above in subparagraph (d) of this paragraph 3, and such fee remains unpaid and/or the violation or noncompliance giving rise to such fee and/or sanction remains unresolved by Member, then the Association may pursue any and all remedies for noncompliance described in the Charter which may include a public notice of such violation or noncompliance recorded in the Office of the County Clerk for the County of Kaua`i, Hawaii, with reference to the Property.

4. Timely Completion of Improvements. Member shall diligently pursue and complete all Construction Activity approved by the DRC, including landscaping. Construction must commence within one year of receiving DRC approval and must be completed within two years after commencement, unless otherwise approved by the DRC. All Improvements, modifications and landscaping shall be constructed and performed in a workmanlike manner in accordance with

   (a) The Charter and Design Guidelines promulgated thereunder;

   (b) The Certificate of Charter Compliance and this Agreement; and

   (c) All applicable local, county, state and federal ordinances, codes, regulations, statutes, etc. "Completion" for the purpose of this Agreement, shall mean all Improvements and modifications, including landscaping, are fully ready for final inspection by the DRC in preparation for issuance of a Certification of Construction Approval (as defined in the Design Guidelines).

5. Construction Compliance Deposit

   (a) Payment. Member agrees to deposit with the DRC, concurrently with the Member's signature below, a construction compliance deposit in the amount of $20,000.00 for a new home or in an amount designated by the DRC based on the scope between $5,000 and $10,000 for a modification or addition (the "Construction Deposit"). The purpose of the Construction Deposit is to secure and assure Member's compliance with the Charter, the Certificate of Charter Compliance, and this Agreement throughout the duration of the Member's Construction Activity until completion, including completion of landscaping. The Construction Deposit shall be made payable to "BBCPKD" in the form of a personal or cashier's check and shall be maintained by the DRC or the Declarant in an account at an insured depository institution.

   (b) Use of deposit. Member agrees that if Member (and/or its employees, agents, or other representatives, including contractors and subcontractors) fail to cure any violation of, or noncompliance with, the Charter or the Certificate of Charter Compliance or this Agreement after notice and within the timeline established by such notice, to pay the cost to repair any damages to common elements, and/or to pay any fee levied by the DRC in connection with

any violation or noncompliance, the DRC may, without further notice to Member, deduct from the Construction Deposit all unpaid fees and all costs and expenses, including but not limited to administrative costs, court costs and attorneys' fees, incurred by the DRC in connection with the enforcement of compliance, or, if Member fails to timely correct any violation or noncompliance, the DRC may draw upon the Construction Deposit to pay the costs incurred by the Declarant to remedy the circumstances creating the violation or noncompliance. Member is not entitled to reimbursement for any costs incurred by the DRC in enforcing compliance with this Agreement. To the extent the Member's Construction Deposit is insufficient to reimburse the DRC for such expenses, Member agrees to timely replenish the deposit in the amount reasonably required by the DRC after written demand therefore.

(c) Return of deposit. Upon the DRC's issuance of a Certification of Construction Approval to the Member (as defined in the Design Guidelines), the Construction Deposit (or such unused portion of the Construction Deposit, if any, as remains upon the issuance of such Certification) shall be returned to Member upon Member's written request. The Construction Deposit, or such portion as remains on deposit with the DRC two years after issuance of the Certification of Construction Approval, shall be deemed forfeited to the DRC if not requested in writing by the Member prior to expiration of such two years.

(d) Dispute over deposit. In the event of a controversy or dispute regarding the Construction Deposit, or any portion thereof, unless the parties mutually agree in writing as to the disposition of the disputed funds, the DRC shall not be required to take specific action with respect to the funds on deposit without an order of a court of competent jurisdiction, or the DRC may, in its sole discretion, interplead all affected parties and deposit any funds held by it into a court of competent jurisdiction.

6. **Impact Fee.** Member agrees to pay to the DRC, concurrently with the Member's signature below, an Impact Fee of $5,000 for a new home and $2,500 for a modification or addition ("Impact Fee"). The impact fee is a non-refundable fee to help defray the costs due to increased wear and tear on the common elements, such as streets, caused by or related to the additional vehicles and transport of materials and equipment within the community during construction. The Impact Fee shall be made payable to "BBCPKD" in the form of a personal or cashier's check.
7. **Good Construction; Soils Condition**. All Improvements to be built by Contractor shall be constructed in accordance with standard industry practices and all applicable jurisdictional authorities. Member and Contractor acknowledge that Declarant, the developer, and the DRC are not in any way representing or warranting the soils condition upon the Property. Prior to commencement of Construction Activity on the Property, the Member shall, at their expense, cause to be conducted all such investigations and certifications or recertifications of the grading and compaction of the Property as reasonably required in connection with quality construction standards and generally accepted practice to confirm compaction of the Property and to determine appropriate soils engineering specifications and specific foundation recommendations prior to Construction Activity. Member and their Contractor shall cause the Property to be designed and improved as necessary (which may include, without limitation, grading, compaction, other improvements, and a particular type of concrete slab, if recommended) to commence construction and to minimize or eliminate all risk of subsidence and any other settlement, expansion, swell or movement of the soils.
8. **Terms.** Capitalized words used in this Agreement, but not otherwise defined, shall have the same meaning ascribed to such terms in the Charter or in the Design Guidelines, respectively and as applicable, unless otherwise stated.
9. **Duration of Agreement**. This Agreement shall remain in effect until all Improvements, modifications, and landscaping proposed by Member for the Property and approved by the DRC are completed and the DRC has issued a Certificate

of Construction Approval together with a written accounting for disposition of the Construction Deposit. Time is of the essence in the performance of this Agreement.

10. Indemnification. In addition to, and not in limitation of all other covenants of Member under this Agreement, or as set forth in the Charter or any of the "Governing Documents" referenced therein, Member hereby does and shall indemnify, defend and hold harmless the Declarant, the DRC, the Association and all of their respective directors, officers, members, partners, consultants, employees, managers, and agents and their successors and assigns (collectively, the "Indemnitees"), for, from and against all injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses (including but not limited to court costs and reasonable attorneys' fees and expenses) (collectively, the "Liabilities") whatsoever sustained by or made or threatened against any or all Indemnitees, which result from or arise out of or in connection with the Member's Construction Activity (whether or not negligent or in violation of any applicable law, rule, regulation or order), including, without limitation, any design defect or construction defect in any improvement, fixture or other property constructed, installed or otherwise provided by its contractor (or its subcontractors or its and their respective employees, agents, invitees or licensees) in, at or on the Property, and including the grading and compaction of the land in the Property, and/or the approval thereof and/or enforcement of compliance with this Agreement. Member shall promptly reimburse the Indemnitees for all Liabilities incurred by any Indemnitees, in defending against any such claim or demand alleged to arise out of Member's Construction Activity or the other matters indemnified under this paragraph. Such indemnification and reimbursement shall include reasonable attorneys' fees and court costs, regardless of whether court proceedings are commenced or concluded. Additionally, Member agrees that the Indemnitees shall not be responsible or liable to Member or its contractor (or their respective employees, agents, invitees or licensees), or their successors in interest or assigns, for any conditions affecting the Property, and Member, on its behalf and on behalf of all future owners of the Property, hereby fully release the Indemnitees, from any and all claims that it may now have or hereafter acquire against any Indemnitees, for any Liabilities arising from or related to any construction defects, errors or omissions or other conditions affecting the Property. Member further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action.
11. Insurance. Member shall at all times carry all liability and hazard insurance necessary to fully insure the Property and all Construction Activity conducted thereon.
12. Waiver of statutes of limitations. Member, individually and on behalf of its employees, assigns, agents, descendants and other representatives, expressly agrees that for the duration of this Agreement, any and all statutes of limitation or similar bar(s) against legal or equitable relief that may become available to the Member in connection with any efforts by the DRC to enforce compliance with this Agreement and/or the Charter and/or the Certificate of Charter Compliance, as a partial or complete defense or bar of any kind (including an affirmative defense) against any cause of action or claim for relief available or that may become available to the Declarant and/or the DRC regarding subject matter in this Agreement, are hereby waived. Any and all such statutes of limitation or similar bar(s) against relief, including but not limited to those under Hawaii Revised Statutes, and including but not limited to all provisions of the Charter, shall not be invoked, raised, asserted or otherwise relied upon by Member as a defense or bar against any relief, legal or equitable, claimed by the DRC and/or the Declarant. Member acknowledges that it has had the opportunity to review this Agreement and the Charter with legal counsel of its choice.
13. DRC Right of entry. Member hereby grants to the DRC and its employees, agents, consultants, and other

representatives the right to enter upon the Property at such reasonable times and upon such reasonable notice to Member or Member's authorized agent for the purpose of inspecting Construction Activity to confirm compliance with the Charter, the Certificate of Charter Compliance, the Construction Rules, and this Agreement. In the event of an emergency, the DRC and its authorized agents are authorized to take such measures as they may deem necessary to prevent an unreasonable risk of harm to person and/or property that arises out of the Construction Activity or condition of the Property.

14. **Exclusive Rights to Use "Kukui`ula" Name.** The "Kukui`ula®" name, mark and logo are federally trademarked, with all rights reserved to BBCPKD. Therefore, neither the name "Kukui`ula" nor any derivative of such name shall be used or included by Member (including, but not limited to, Member's architects, contractors, subcontractors, and landscapers) in any logo or depiction, or in any printed or promotional material, domain name, e-mail address, business name or entity name, without BBCPKD's prior written consent in its sole discretion, even if such entity is created for the sole purpose of constructing a home on a Kukui`ula lot or leasing, and/or marketing, or owning or selling any other lot within Kukui`ula.
15. **Joint and Several Liability**. If Member consists of more than one Person or entity, each such person and/or entity shall be fully responsible for all obligations imposed by this Agreement. All references herein to "Member" in the singular shall include the plural and shall apply to all Members regardless of gender and regardless of whether a Member is a natural person or entity.
16. **Notices**. All communications and notices required or permitted by this Agreement shall be in writing and deemed effective when received by either Member, contractor, or Member's representative, or the DRC (as applicable) via personal delivery, email, United States mail, in all cases addressed to the address and/or email address set forth below or to such other address as a party shall have designated by notice in writing to the other party:

If to Member (include email address):

Address:_____

_____

_____

Phone 1 (Mobile):_____ Phone 2:_____

Email:_____

If to the DRC: Kukui`ula DRC Representative
Attn: Cathe Turley
2700 Ke Alaula Street, Suite B
Koloa, Hawaii 96756
cturley@kukuiula.com
808.720.7786

17. **Modification/ Amendment**. This Agreement may be modified or amended only in writing signed by Member, BBCPKD representative, and DRC representative.
18. **Counterparts and Facsimile Signatures**. This Agreement may be signed in counterparts, in which case all counterparts together shall constitute one and the same instrument binding upon all of the parts hereto, notwithstanding that all of

the parties are not signatory to the original or the same counterpart. Facsimile or PDF signatures shall be treated as original signatures hereon and on any notices given hereunder.

19. Severability. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, it shall not affect or impair the validity, legality, or enforceability of this Agreement itself or of any other provision hereof, and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.
20. Choice of Law. Any and all disputes arising out of or in connection with this Agreement shall be governed by the laws of the State of Hawaii.
21. Attorneys' Fees and Costs. In the event of litigation arising out of this Agreement, the Court shall award to the prevailing party reasonable costs and expenses, including attorneys' fees.
22. Binding on Agents, etc. This Agreement is binding upon Member, its agents, employees, contractors, subcontractors, assigns, descendants and other representatives. All consents given under this Agreement by Member are deemed given also by Member's agents, employees, contractors, subcontractors, assigns, descendants and other representatives.
23. Incorporation by Reference. The Charter (as may be amended and/or supplemented from time to time), is hereby incorporated by reference into this Agreement and made a part hereof and shall be interpreted as a whole to further the objectives of the community governed by the Declarant.
24. Authorization to Bind & Guaranty. If Member is an entity and not a natural person, the undersigned signatory on Member's behalf warrants that he / she is authorized to sign on behalf of Member and furthermore personally and unconditionally guarantees Member's performance under this Agreement.

EXECUTED to be effective on the date Member signed.

Member

_____	_____	_____
Print	Signature	Date

BBCPKD Representative

Chris Rivera	_____
Print	Signature

DRC Representative

Cathe Turley	_____
Print	Signature