

First Amendment to Declaration of Covenants Conditions and Restrictions

NOW THEREFORE Declarant hereby amends the first Paragraph of Section 3.23(d) of the Declaration to read as follows:

(d) Setbacks; Building Envelopes. The required front yard setback shall be fifty (50) feet from and the side and rear yard setbacks shall be thirty (30), feet from the respective boundaries of each Lot; provided however, that with respect to corner lots the front boundary shall be the boundary where the driveway entrance is constructed. In the case of flag Lots, thirty-five (35) foot front yard setbacks and thirty (30) foot side .and rear yard setbacks shall be required.

ARTICLE I DEFINITIONS

The following words when used in this Declaration, unless the context otherwise specifies or requires, shall have the following meanings:

- 1.01 Association. "Association" means the Kealakekua Bay Estates Community Association, a non-profit association described in Article VII, and its successors and assigns.
- 1.02 Board. "Board" means the Board of Directors of the Association.
- 1.03 Buildable Area. "Buildable Area" means the area of a Lot, as hereinafter defined, located within the building setback lines established in accordance with Section 3.23 (d) of the Declaration.
- 1.04 By-Laws. "By-Laws" means the By-Laws of the Association which are attached hereto as Exhibit "B" and incorporated herein and made a part hereof by this reference, as such By-Laws may from time to time be amended.
- 1.05 Common Area. "Common Area" means all of the Rea1 Property and easements which are owned, by or in favor of the Association and which have been or may be used by more than one Owner, including Roads, the Floodway, and all planting and restricted access easements the use of which has been reserved In documents of conveyance for Lots in Kealakekua Bay Estates and which by such documents are specifically subject to the Declaration.
- 1.06 Declarant. "Declarant" means T. Red Co., Inc., its successors and assigns, including, any other Person or Persons who the Declarant may designate as having the powers and functions of Declarant or some of the powers and functions.
- 1.07 Declaration. "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as such Declaration may from time to time be amended.
- 1.08 Design Committee. "Design Committee" shall mean the Committee created pursuant to Article V hereinafter set forth.
- 1.09 Design Committee Requirements. "Design Committee Requirements" shall mean those rules adopted by the Design Committee pursuant to Section 5.04 hereof, a true copy of which is attached hereto as Exhibit "C".
- 1.10 Excavation. "Excavation" means any disturbance of the surface of the land (except temporarily for planting) which results in the removal of earth or rock for a depth of more than eighteen inches.
- 1.11 File or Filed. "File" or "Filed" means with respect to any subdivision map, the map which has been filed in the Bureau of Conveyances of Hawaii.

1.12 Fill. "Fill" means any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than six inches.

1.13 Floodway. "Floodway" means the drainage channel located within Kealakekua Bay Estates Lots 56 and 57 and that certain drainage easement affecting Kealakekua Bay Estates Lots 36 and 37; said Floodway shall be a Common Area owned, maintained and repaired by the Association.

1.14 Garage. "Garage" means a completely enclosed structure used for parking vehicles, boats and/or trailers herein.

1.15 Improvements. "Improvements" means all buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, poles, mailbox, exterior light fixtures, signs and any other structures of any type or kind on or within the Real Property or a Lot.

1.16 Lot. "Lot" means a portion of the Real Property which is shown as a separately numbered or lettered Lot on the Subdivision Map; provided, however, that the Common Areas shall not be "Lots". Unless the context indicates otherwise, "Lot" also includes all Improvements thereon.

1.17 Maintenance Assessment. "Maintenance Assessment" means any assessment levied pursuant to section 8.02.

1.18 Notice. "Notice" means a Notice delivered pursuant to Section 9.19.

1.19 Kealakekua Bay Estates. "Kealakekua Bay Estates" means the Real Property and all structures, buildings and other Improvements now or hereafter located on the Real Property or any Lot.

1.20 Owner. "Owner" means any Person (including Declarant) who is, or any Persons who are, jointly or in common, the record Owner or Owners of a fee simple interest in any Lot. An Owner may assign all or a portion of the Owner's rights and privileges and delegate all or a portion of the Owner's duties and obligations as Owner, except for voting rights, to tenants, contract purchasers, purchasers under an agreement of sale or lessees under a lease. An Owner may assign the Owner's voting rights hereunder only to purchasers under an agreement of sale, contract purchasers, or lessees having a lease with a term of at least ten years. Such assignee and delegate shall, with respect to such assigned rights and privileges and such delegated duties and obligations, be considered the "Owner" of the Lot; providing, however, that nothing contained herein shall relieve the fee Owner of the Lot from ultimate liability for all duties, obligations and "liabilities of an owner under this Declaration or the Design Requirements.

1.21 Person. "Person" means a natural individual, corporation, partnership or any other legal entity.

1.22 Real Property. "Real Property" means all of the Real Property described in Exhibit "A" attached hereto.

1.23 Record. "Record, Recorded and Recordation" means with respect to any document, the Recordation or Filing of such document in the Bureau of Conveyances of the State of Hawaii.

1.24 Recorded High Point. "Recorded High Point" means the highest elevation of a Lot with the Buildable Area as established by a topographical survey pursuant to Section 3.23 of this Declaration.

1.25 Residence. "Residence" means a building or buildings used for residential purposes, together with any Garage or similar outbuilding appurtenant thereto whether or not a part of the same structure.

1.26 Road. "Road" means any paved vehicular way constructed within or upon any portion of the Common Area except any apron or other paved area constructed for the purpose of providing access from such Road to any Lot.

1.27 Single Family. "Single Family" means one or more Persons, each related to each other by blood, marriage, or legal adoption, or a group of not more than three (3) Persons not so related, together with his or her domestic servants and transient guests.

1.28 Subdivide. "Subdivide" means the division of any Lot into two or more parcels and does not include either (i) the consolidation of any two or more lots or (ii) the consolidation and resubdivision of two or more lots provided that such consolidation and resubdivision does not result in an increase in the overall number of Lots.

1.29 Subdivision. "Subdivision" means a parcel of Real Property divided or separated into Lots as shown on a subdivision map approved pursuant to the subdivision ordinances of the County of Hawaii, or the division of a parcel of Real Property pursuant to Hawaii Revised Statutes, Chapter 514A through submission of the property to a "Condominium Property Regime" or the procedure of so dividing or separating Real Property.

1.30 Visible from Neighboring Property. "Visible from Neighboring Property" means, with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above any other lot(s), excluding any contiguous Lot (s) owned by the Owner of the lot involved, but including Roads, assuming that such other Lot has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the Lot upon which such object or activity is located, whichever elevation is the lower.

ARTICLE II PROPERTY SUBJECT TO DECLARATION

2.01 The property subject to this Declaration shall be the Real Property described in Exhibit "A" attached hereto and made a part hereof, which shall be known as the "Kealakekua Bay Estates Subdivision."

ARTICLE III RESTRICTIVE COVENANTS

3.01 Use of Lot. No Improvement or other work which in any way alters any Lot from its natural or improved state existing on the date such Lot was first conveyed to an Owner, shall be made or done except upon strict compliance with and within the restrictions of the provisions of this Declaration. Each Lot and the Improvements thereon shall be used exclusively for agricultural and single-family residential purposes. Subject to the terms and provisions of Article 3.12, "agricultural activity" includes the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber; game propagation, raising of livestock, including, but not limited to, fish or other animals or aquatic life, that are propagated for noneconomic or personal use. Nothing in this paragraph shall be deemed to prevent:

(a) the leasing of any Lot from time to time by the Owner thereof, subject, however, to all of the restrictions of this Declaration, provided that no Lot or the Improvements thereon shall be rented or leased for less than a one (1) month period of time nor used for "transient vacation rental" purposes as that term is defined in Hawaii Revised Statutes Chapter 514E;

or

(b) the Declarant from maintaining a real estate sales office, or model home, or from otherwise conducting sales activities on any Lot.

3.02 Maintenance of Lot. Each Lot, whether occupied or unoccupied, and any and all Improvements from time to time located thereon, shall at all times be maintained in good, clean and attractive condition and in such manner as to prevent such Lot and Improvements from becoming unsightly, unsanitary or a hazard to health. without limiting the generality of the foregoing, each Owner shall, at the Owner's own expense (1) keep the Lot free from rubbish and litter; (2) restore and repair all damage and destruction caused by casualty to the Lot or any Improvement thereon; (3) maintain, cultivate and keep in good condition all shrubs, trees, grass, lawns, plantings and other landscaping originally located on or from time to time placed upon the Lot; (4) trim and restrain all trees, shrubs and plantings so that they shall not overhang or otherwise encroach upon, any walkway or Road,

unless prior approval of the Association is obtained; (5) maintain in good condition and repair and preserve the finish of all fences located on or from time to time placed on the Lot; (6) maintain all paved surfaces and keep them clean, reasonably dry and free of all and other extraneous matter; and (7) maintain all slope areas upon the Lot. If not so maintained by the Lot Owner (the "defaulting Lot Owner"), Declarant, the Association, or any other Lot Owner may, upon thirty (30) days prior written Notice to the defaulting Lot Owner, maintain, restore or repair such Lot and such Improvements, the cost of which shall be reimbursed (together with interest thereon at the rate of one percent (1%) per month) by the defaulting Lot Owner. The Declarant, the Association, or any Lot Owner who maintains, restores, or repairs such Lot or Improvements for the defaulting Lot Owner shall have a lien against the defaulting Lot Owner's Lot to secure such reimbursement, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees and court costs. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. The foregoing remedy shall be in addition in any other remedies provided by law for the enforcement of such obligations. Neither Declarant nor the Association, nor any of their members, agents, employees or contractors shall be liable for any claim for damage which may result from any maintenance, restoration or repair work performed hereunder, provided that that Person against whom the claim is made has, upon the basis of such information as may be actually possessed by that Person, acted in good faith and without willful or intentional misconduct. The requirement of this section shall not apply to any unimproved Lot, during any period of time that the construction of Improvements on the Lot is occurring and for a period of one (1) year following the publishing of a "Notice of Completion" for the Subdivision Improvements as provided in Chapter 507, Hawaii Revised Statutes, as amended.

3.03 Signs. The only Signs or billboards permitted to be displayed on any Lot are as follows, which Signs shall be approved by the Design Committee:

- (a) Directional signs established by Declarant or approved by the Association;
- (b) Any signs that may be required by State statute, County ordinance, or legal proceeding;
- (c) Identification signs of a combined total face area of one hundred forty-four (144) square inches or less for each Lot;
- (d) During the time of construction of any Improvement, one job identification sign having a maximum face area of four (4) square feet;
- (e) One "for sale" or "for rent" sign, having a maximum face area of four (4) square feet, which sign refers only to the premises on which it is situated;
- (f) Signs, billboards and other advertising or directional devices or structures used by Declarant in connection with the development, subdivision, advertising, and sale of Lots; and
- (g) Such other signs as may specifically be approved by the Association or Declarant.

3.04 Repair and storage of Vehicles. No truck of more than one ton capacity, trailer, camper, vehicle or boat, shall be kept, parked, constructed, reconstructed, repaired or stored upon any Lot in such a manner that such construction, reconstruction, repair or storage is visible from any road or public view, nor shall any nonoperable vehicle be kept upon any Lot so as to be visible from any road or public view; provided, however, that the provisions of this Section shall not apply to construction equipment used exclusively in connection with the construction or any Improvements permitted by the Declaration. Nothing in this section shall prevent an Owner from storing a trailer, vehicle or boat solely within his Garage.

3.05 Construction of Accessory Structures. No accessory structure or building shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure of the Residence.

3.06 Flooding and Erosion. No Owner shall construct or cause to be constructed on any Lot any Improvement which will create a problem of flooding, erosion or interference with natural water flow or original runoff pattern damaging to such Lot, the common areas, or adjacent properties, nor shall any Owner fail to reasonably act so as to minimize runoff damage or interference with the natural flow of storm waters. Each Owner shall provide for the installation of necessary culverts and drainage facilities upon the Owner's Lot and for keeping the culverts and drainage facilities in good repair. Each Owner shall keep all the drainage facilities and culverts so installed on the Owner's Lot, as well as any other drainage facilities and culverts located on the Owner's Lot, free and unobstructed.

3.07 Garbage and Refuse Disposal. All garbage and refuse shall be removed regularly, but not less than once a week, so as not to create a hazard or nuisance to adjacent property. Each Owner of any occupied dwelling on any Lot shall subscribe to private weekly garbage collection service, if it is available. No Owner shall burn or permit the burning of garbage, trash or other household refuse on any Lot ,nor shall any Owner accumulate or permit to be accumulated on any Lot any litter, refuse or garbage, except in receptacles designed for such purposes, screened from view from any adjoining road or neighboring property.

3.08 Towers, Antennas and Other Facilities. Except as provided herein below, no radio and/or television towers, antennas, aerials or other facilities for reception or transmission of radio or television broadcasts or other means of communication shall be erected or maintained or permitted to be erected or maintained an any Lot. Satellite dishes for the reception of radio and/or. television signals shall be permitted but only upon prior written approval of the Design Committee and only if so screened by planting or fencing so as not to be visible from an adjoining Road or neighboring property. Appliances, equipment or installations upon or over roofs of such structures such as solar heating systems shall be permitted so long as prior written approval is obtained from the Design Committee and they are installed in a fashion which minimizes their visibility from any neighboring property.

3.09 Parking. No Owner shall park or keep any vehicle, boat or trailer on any Road or common area or on any portion of his Lot visible from an adjoining Road or neighboring property, except for the temporary storage of vehicles on a paved driveway area.

3.10 Outbuildings, Trailers and Temporary Structures. No temporary buildings or structures, outhouse sheds, trailers or tents, except for the Declarant's temporary sales offices, trailers, tents or other temporary structures necessary in connection with any permitted construction, shall be erected, placed or permitted to remain on any Lot. No Garage, shed, trailer, mobile home, tent, temporary building, or partially completed building shall be used for human habitation.

3.11 Visibility of Clotheslines, Tanks and Material. No clotheslines or fuel storage tanks shall be placed on any Lot In a location visible from an adjoining Road or neighboring property. No lumber, metal or bulk materials shall be kept, stored, or allowed to accumulate on any Lot out of doors.

3.12 Animals. No pigs or poultry shall be raised, bred or kept on any Lot. Other animals may be kept on any Lot as long as the animals do not become an annoyance or nuisance to Owners of other Lots in the Kealakekua Bay Estates Subdivision. For purposes of this Declaration, (i) the emission of noise or the generation f odors by any animal kept on a Lot, which noise or odor is readily detectable on any other Lot in the Kealakekua Bay Estates Subdivision and (ii) ,the wandering of any animal beyond the boundaries of any Lot upon which such animal is kept, shall ho deemed to be a prohibited annoyance or nuisance.

3.13 Pests. No Owner of a Lot shall permit any thing or condition to exist on any portion of the Lot which shall induce breed or harbor infectious plant diseases, or noxious insects, or vermin.

3.14 Hunting: Firearms. Neither hunting nor the discharge of any firearm shall be permitted on any Lot.

3.15 Destroyed Improvements. No Improvement which has been partially or totally destroyed shall be allowed to remain ON any Lot in such a condition for more than ninety (90) days from the date of such destruction.

3.16 Removal of Trees and Walls. No trees or walls planted or erected by Declarant within any Common Area, including, without limitation, an trees or walls which were planted or erected by Declarant within an easement on a Lot which is a Common Area, may be removed without the consent of the Design Committee.

3.17 Dust. Each Owner, and any Person on or about n Lot, or using or constructing any Improvements thereon, shall take all reasonable measures to eliminate or reduce any dust or blowing dirt which is or will become an annoyance or nuisance to other Persons within the Subdivision. For purposes of this Declaration, activities or uses that create dust or blowing dirt on a daily basis which blow onto or settle upon other Lots shall be deemed a prohibited annoyance or nuisance.

3.18 No Hazardous Activities. No activities shall hu conducted on any Lot and no Improvements shall be constructed upon any Lot which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no fire or barbecue shall be started or maintained on any Lot except (1) cooking fires, imus and barbecues while attended and contained within barbecue units or other property enclosures, (2) fires contained within safe and well-designed interior fireplaces which are fitted with well-maintained spark arresters, and (3) agricultural burning performed in compliance with all applicable governmental requirements and after having obtained all requisite governmental permits.

3.19 Subdivision. Condominium Property Regime, Ohana. No Lot within the Kealakekua Bay Estates. Subdivision subject 1.0 this Declaration shall be (i) subdivided pursuant to Hawaii County Code Chapter 23, (ii) submitted to a condominium property regime pursuant to Hawaii Revised Statutes Chapter 514A, or (iii) improved with a second "Ohana dwelling" pursuant to Hawaii County Code Chapter 25.

3.20 Pedestrian Right of Way. The pedestrian right of way over and across Kealakekua Bay Estates extending between the Upper and lower portions of Napoopoo Road shall be a Common Area maintained by the Association but shall be open to the public during daylight hours.

3.21 Common Areas: Uses: Restrictions. The exclusive use of the common areas shall be reserved equally to all Owners, except as herein specifically provided, and every Owner shall have a right and easement for enjoyment in and to the common areas, which easement shall also be appurtenant to and shall pass with the title to every Lot, subject; however, to the following limitations and restrictions:

(a) The use of the common areas shall be subject to rules established or to be established by the Association.

(b) The use of the common areas shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance thereof to the Association, to such Road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provision of Section 7.05(d).

(c) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above and Section 3.22, there shall be no use of the common area, exclusive of Roads, except natural recreational uses which do not injure or scar the common areas or the vegetation thereof, which increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in their enjoyment of the common area; without limiting the generality of the foregoing:

(1) There shall be no camping in common areas.

(2) There shall be no fires started or maintained in the common areas, except fires started and controlled by the Association incidental to the maintenance and preservation of property within the Subdivision.

(3) No animals shall be kept or permitted in the common areas except household pets when accompanied by and under the control of the Owners to whom they belong.

(4) No vehicles, boats or trailers of any type shall be parked or stored in the common areas.

(5) There shall be no use of the paved portion of the Roads within the common areas by vehicles or machinery without rubber tires.

(d) The rights to use and enjoy the common areas shall extend to the members of the families of all Owners and to their invitees, provided, however, that the pedestrian right of way described in Section 3.20 above shall be open to the public during daylight hours.

3.22 Common Areas: Construction, Alteration and Repair. No construction, Fill, Excavation or repair which in any way alters any Common Area from its natural or existing state on the date when such Common Area was acquired by the Association shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this Section:

(a) Except to the extent otherwise provided in section 3.22 (b) below, or approved by the Association, no Person other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any common area.

(b) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any Improvement or portion thereof upon a Common Area in accordance with plans thereof approved by the Design Committee, or if such Improvements existed upon the common area when such common area when designated, then in accordance with the original design, finish or standard of construction of such Improvement when such common area was conveyed to the Association.

(2) Construct, reconstruct, replace or refinish any Road Improvement upon any portion of the common area designated on the Subdivision Map as a Road.

(3) Excavate, Fill or otherwise maintain any and all Common Areas used for drainage purposes in accordance with plans thereof approved by the Design Committee and or the County of: Hawaii Department of Public Works.

(4) Replace any destroyed trees or any other vegetation upon a Common Area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(5) Place and maintain upon any Common Area such street lights, signs and markers as the Association, with the approval of the Design Committee, may in its discretion deem necessary for the identification of the Subdivision, for the regulation of traffic, including parking, and for the regulation and use of the Common Areas and for the health and welfare and safety of the Owners and the public.

(c) Any Owner may, at any time and from time to time, install and maintain within a Common Area any subsurface utility system, driveway, walk, mailbox or landscaping, provided the same is approved by the Design Committee.

3.23 Lot: Construction and Alteration of Improvements: Excavations; etc. The right of an Owner to construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any Lot or to make or create any Excavation or Fill thereon, or In make any change in the natural or existing surface drainage thereof, or to install any Utility line (wire or conduit) thereon and thereover, shall be subject to all of the following limitations and conditions of this Section.

(a) Permitted Improvements. Single family dwellings, Private Garages, structures designed for the protection of animals, such other Improvements as are necessary or customarily incident to single family dwellings or to the conduct of permitted agricultural activity shall be allowed on any Lot. Guest houses for non-paying friends and relatives and accommodations for Persons employed on a Lot as domestic and agricultural employees shall be permitted. No structure or portion of a structure, designed to be rented, sold or otherwise transferred as an ohana dwelling or as a bed and breakfast accommodation shall be permitted on any Lot.

(b) Dwelling Requirements. Each single family dwelling erected on a lot shall have a total floor area of not less than one thousand five hundred (1,500) square feet, exclusive of lanais, porches, patios, Garages, exterior stairways and landings.

(c) Parking Requirements. Each single family dwelling constructed on a Lot shall have as accessory thereto a Garage large enough to accommodate at least two (2) automobiles. In addition, two (2) surfaced guest parking spaces shall ho provided on each Lot.

(d) Setbacks: Building Envelopes. The required front yard setback shall be fifty (50) feet from and the side and rear yard setbacks shall be thirty (30) feet from the respective boundaries of each Lot. In the case of flag Lots thirty-five foot front yard setbacks and thirty (30) foot side and rear yard setbacks shall be required. No building, patio, fence, wall or other Improvement. except (i) a fence or wall not more than seventy-two (72) inches in height; (ii) landscaping; (iii) driveways and walkways; or (iv) tennis courts and below grade swimming pools shall be placed In whole or in part upon or over any portion of any Lot which is designated as a setback area.

No paving, except for the paving of driveways and walks, and no storage or other use of the front yard setback area shall be permitted, except that the setback area may be landscaped. No walls may be erected or placed within the first fifteen (15) feet of a setback area along any road.

(e) Building Height. The maximum building height for any building, structure or other Improvement (except landscaping) constructed or placed on a Lot, shall be no greater than eighteen (18) feet above the Recorded High Point of any Lot, which Recorded High Point shall be established pursuant to and in accordance with paragraph (k) of this Section. Chimneys may exceed this height limitation by no more than 2 feet.

(f) Disposal of Sanitary Waste. No outside toilet shall be constructed on any Lot. All plumbing fixtures, toilets or sewage disposal systems shall be connected to a septic tank, or other sewage system approved by the appropriate governmental authorities; although it currently may allow cesspools, the Department of Health has established a goal that the construction of wastewater disposal systems depositing untreated sewage (as cesspools do) into the environment will not be allowed in the future. Therefore, since Kealakekua Bay Estates is located a mile above Kealakekua Bay, a marine conservation zone, in order to alleviate the possibility of untreated sewage from cesspool leaching into the ground and ultimately into the Bay, cesspools at Kealakekua Bay Estates will be prohibited.

(g) Concealment of utilities and Fuel Storage Tanks. All utilities within the boundaries of any Lot, and between any Road or right of way pole source, shall be placed underground. Every fuel storage tank on any Lot shall be either buried below ground or screened.

(h) Exterior Lighting. The source of all exterior lighting on a Lot shall be subject to approval of the Design Committee.

(i) Site Grading. Grading shall be kept to a minimum and shall be blended with the natural contours of the Lot. Cuts or Fills in excess of thirty-six (36) inches are Improvements which require approval by the Design Committee. No grading or Filling shall affect an adjacent Lot without the consent of the owner of such Lot. All excavated material not immediately used as Fill elsewhere on a Lot must be removed from the Lot within one hundred eighty (180) days.

Where the proposed grading on any Lot requires a permit from the County of Hawaii or a conservation plan approved by a Soil and Water Conservation District, a copy of the permit or approval shall be delivered to the Design Committee prior to the commencement of any grading work or improvement on the Lot. Each Owner shall control the emission of dust and other airborne particles while performing any grading, grubbing or Fill work on any Lot, so as to minimize the inconvenience and annoyance to other Lot Owners. Each Owner shall also provide erosion and mud control measures as necessary to prevent silt or mud from being washed or tracked from the property.

(j) Completion of Construction. Except for Improvements in the nature of landscaping, every Improvement constructed on a Lot, once construction is begun, shall be completed within twelve (12) months or such other time period (longer or shorter) as may be specifically permitted or imposed by the Design Committee. Improvements not completed within such time period, Improvements for which construction is interrupted for ninety (90) days, and Improvements partially or totally destroyed and not rebuilt within such time period shall be deemed nuisances. The time for completion of any construction, repair or rebuilding shall be extended for a period of time equal to the number of days during which construction is prevented or unreasonably interfered with because of strikes, lockouts, embargoes, unavailability or shortages of labor or materials, wars, insurrections, rebellions, acts of God or other causes beyond the owner's reasonable control (financial inability excepted).

(k) Occupancy. No Improvement, intended for human occupancy, shall be occupied until the Improvement has been substantially completed in accordance with the plans and specifications approved by the Design Committee.

(1) Design Committee Approval. Any construction or reconstruction of, or the refinishing or alteration of, any part of the exterior of any Improvement on any Lot is prohibited until and unless the Owner of such Lot first obtains approval therefore from the Design Committee as herein provided, and otherwise complies with all of the provisions of this paragraph. Any Owner proposing to construct or reconstruct, or to refinish or alter, any part of the exterior of any Improvement on or within the Owner's Lot or to perform any other work which under the provisions of this paragraph requires prior approval of the Design Committee, shall apply to the Design Committee for approval thereof as follows:

(i) Submission of Topographical Survey. Prior to any grubbing or grading of any lot and prior to commencing with a final design for any construction or reconstruction of, or the refinishing or alteration of, any part of the exterior of any Improvement on any Lot, the Owner shall deliver to the Design Committee for its approval a topographical survey map prepared by a registered surveyor licensed in the State of Hawaii which shall, at a minimum, indicate (a) the property lines of the Lot, (b) the natural topography of the Lot on a scale of 1 inch equals 10 feet with two foot height intervals on a 24" X 36" drawing, (c) the Buildable Area of the Lot, i.e., the area located within the setback lines established pursuant to paragraph (d) of this Section, (d) the natural elevation of the highest point of the Lot within the Buildable Area, which shall then be known as the Recorded High Point of the Lot.

(ii) Submission and Approval of Plans. Prior to construction, the Owner shall submit to the Design Committee for its approval plans and specifications for the proposed work, which shall include without limitation, floor, elevation, plot and grading plans; specifications for the principal exterior materials; specifications of exterior color schemes; provisions made for owner and guest automobile parking; outside lighting plans, if any; a detailed description of the location, character and method of utilization of all utilities; a determination of the highest point of the structure or Improvement above the Recorded High Point of the Lot. The Design Committee shall review any such plans and specifications

within fifteen (15) working days after the submission of the plans to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. In the event of the Design Committee's failure to return the plans within the fifteen (15) day period, the Owner shall submit a written Notice thereof to the Design Committee. Failure of the Design Committee to act within ten (10) working days after submission of this written Notice shall be deemed to mean that the plans are approved. The Design Committee may require the payment of a reasonable fee for the review of plans. Such fee shall not exceed \$250.

(2) Exceptions. Except as may be required in connection with the work undertaken within Common Areas pursuant to Section 3.22, no approval from the Design Committee is required for any of the following:

(i) Interior alterations to structure. Improvements a previously and/or approved structure.

(ii) Reconstruction, refinishing, maintenance or repair in conformance with plans previously approved by the Design Committee.

(iii) Grading, consisting of cuts and Fills of a maximum depth of thirty-six (36) inches or less, and Excavation, regardless of depth, for planting wells.

(3) Inspection of Improvements: Noncompliance. Upon the completion of any construction, reconstruction, alteration or refinishing, or the completion of any other work for which approved plans are required pursuant to this Section, the Owner shall give written Notice thereof to the Design Committee, which shall, within thirty (30) days, inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans and specifications. If the Design Committee finds that the construction is in substantial compliance with approved plans and specifications, it shall notify the Owner in writing of such approval. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner fails to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required and approved by the Design Committee, the Design Committee shall notify the Association of such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

(4) Design Standards to Comply with Declaration. The Design Committee shall have no power, either deliberately or through inadvertence, to vary any of the standards and restrictions set forth in this Declaration, except as may be specifically permitted herein, and in the event of violation of any of such standards and restrictions by an Owner, whether or not the Design Committee approved the plans and specifications, the Association may commence and pursue any remedy provided in this Declaration for the violation by an Owner of the restrictions.

(5) Standards of Review. In reviewing plans and specifications the Design Committee shall consider the requirements and restrictions in sections 3.01 thru 3.23, and the Design requirements adopted pursuant to Section 5.04 and also shall consider whether the proposed improvement:

(i) Is compatible and in harmony as to quality and type of materials and workmanship and as to external design with reference to existing structures and other Improvements in the area and with reference to the location of the proposed Improvement with respect to topography and ground elevation;

(ii) Conforms to the general plan of the entire Kealakekua Bay Estates;

(iii) Constitutes a substantial and adequate development for the Lot and;

(iv) Is, in the case of the principal building, substantially as valuable an improvement as the other comparable buildings in the Kealakekua Bay Estates, or exceeds the same.

3.24 Restoration by the Association. The Association may, in the event of violations of the provisions of Section 3.01 thru 3.23, restore the private area to its state existing immediately prior to the violation. The Owner of the Lot shall reimburse the Association for all expenses incurred by it in performing its obligations under this Section.

3.25 Presumption of Compliance. All of the following Improvements, Excavations, Fill and other work for the purposes of this Declaration shall be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article:

(a) Those existing or maintained within or upon any property within the Kealakekua Bay Estates at the time such property became a part of the Kealakekua Bay Estates.

(b) Those existing or maintained within a private area at the time such private area was first conveyed by the Declarant to an owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restriction in this Declaration, pursuant to plans and specifications approved by the Design Committee.

3.26 Governmental, Public utility, Eleemosynary, Religious, Educational, Community and Civic Organizations. Anything in the foregoing Sections of this Article to the contrary notwithstanding, the restrictions on Improvements, use and occupancy set forth in said Sections shall not apply to any Lot or other area while and so long as the same is owned, leased, or otherwise acquired by the State of Hawaii or County of Hawaii, or any governmental agency or public utility, and used for public, governmental or public utility purposes, whenever and to the extent, but only to the extent, that such restrictions shall prevent reasonable use of such Lot for said purposes. On cessation of such use, the restrictions of this Article shall become applicable again in their entirety. The Declarant and the Association shall each have the power to release any Lot or other area owned by it, temporarily or forever, from any restrictions in this Article if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of the same by said State of Hawaii, County of Hawaii, agency, public utility, institution or organization. While so owning, leasing or otherwise acquiring, and so using, said State of Hawaii, County of Hawaii, agency, public utility, institution or organization shall have no right to vote as a member of the Association, but shall be liable for any assessments under the provisions of Article VIII, and shall be liable for all costs and expenses incurred by the Association in enforcing against it any of the provisions of this Declaration or arising out of any default by it of said provisions.

ARTICLE IV AGRICULTURAL RESTRICTIONS

4.01 Agricultural Activity. Agricultural activity may be developed on each Lot in the Kealakekua Bay Estates. As used herein, "agricultural activity" means the cultivation of crops, including but not limited to flowers, vegetable, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to fish or other animal or aquatic life that are propagated for noneconomic or personal use.

ARTICLE V DESIGN COMMITTEE

5.01 Design Committee: Appointment and Removal of Members.

(a) Organization. There shall be a Design Committee consisting of not less than three (3) or more than five members. Every member other than an initial member and other than a member appointed by Declarant, shall also be an Owner. At least one member of the Design Committee shall be an architect or other person similarly knowledgeable in the area of building construction methods and materials, if such person is available to serve on the Design Committee. The Declarant has the right, but not the obligation, to select the initial members of the Design Committee.

(b) Term of Members. Each member of the Design Committee shall hold office for a term of two (2) years or until such time as that Person has resigned or a successor has been appointed, as herein set forth. A Person may be appointed for more than one term.

(c) Appointment of Members by the Association. The right from time to time to appoint and remove members of the Design Committee shall be reserved to and vested in the Association, provided, however, that in the event that the Declarant exercises its right to select the initial Design Committee, the right of the Association to appoint and remove members thereof shall be as follows:

(1) From and after one (1) year from the date of this Declaration, the Association shall have the right to appoint and remove one member of the Design Committee, who shall be the member who is the most recently appointed member as of the date such right is first exercised.

(2) From and after two (2) years from the date of this Declaration, the Association shall have the right to appoint and remove two members of the Design Committee.

(3) The Association shall have the right to appoint and remove all members of the Design Committee from and after three (3) years from the date of this Declaration; provided further, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members.

(d) Resignation of Members. Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant or to the Association, whichever then has the right to appoint and remove members.

5.02 Design Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Requirements pursuant to Section 5.4 and to perform such other duties from time to time delegated to it by this Declaration or the Association.

5.03 Design Committee Meetings, Actions, Compensation and Expenses. The Design Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of its members shall constitute the act of the Design Committee, unless the unanimous action of its member is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with their performance of any Design Committee function.

5.04 Adoption and Amendment of Design Requirements. The initial Design Committee has adopted design and construction requirements which establish the procedures for submission and approval of plans, specifications and other materials pertaining to the erection, construction, installation, alteration, placement, maintenance and remodeling of, and the construction of additions, to Improvements within the Kealakekua Bay Estates and which establish design standards for all buildings, landscaping, grading, and other Improvements within the Kealakekua Bay Estates, a copy of these Design Requirements are attached hereto as Exhibit "C" and incorporated herein by reference. The Design Committee may from time to time adopt additional design and construction requirements

and amend or repeal the existing design and construction requirements. The design and construction requirements as so adopted, amended or repealed shall constitute the Design Requirements. A copy of the Design Committee Design Requirements, shall be kept available at all times at the office of the Association and at the office of Declarant, for the inspection by any Owner, architect or agent of the Owner or architect.

5.05 Non-Waiver. The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under this Declaration shall not waive any right of the Design Committee to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

5.06 Variations. The Design Committee may permit reasonable variances from the provisions of Article III in order to (i) overcome practical difficulties and (ii) either prevent unnecessary hardships or enhance the use of the Lot in question, provided that the Design Committee finds that the variance will not be materially detrimental to other Lots in the Kealakekua Bay Estates.

5.07 Estoppel Certificate. within thirty (30) days after written demand therefore is delivered to the Design Committee by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Design Committee shall deliver to such Owner an estoppel certificate executed by any two of its members in form suitable for Recording in the Bureau of Conveyances of the state of Hawaii and the Office of the Assistant Registrar of the Land Court of the State of Hawaii, certifying with respect to any Lot of said owner that, as of the date thereof, either (a) all Improvements and other work made of done upon or within said Lot comply with the Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also (i) identify the noncomplying Improvements or work, and (ii) set forth with particularity the cause or causes for such noncompliance. Any purchaser or lessee from the Owner or mortgagee or other encumbrancer of the property shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such purchaser, lessee, mortgagee or other encumbrancer.

5.08 Liability of Design Committee Members. Neither the Design Committee nor any member thereof shall be liable to the Association or to any Owner or to any other Person for any damage, loss or prejudice suffered or claimed on account of the following, provided that the person against whom the claim is made has, upon the basis of such information as may be actually possessed by that Person, acted in good faith and without willful or intentional misconduct:

- (1) The approval or disapproval of any plans, specifications and other materials, whether or not defective; or
- (2) The construction or performance of any work, whether or not pursuant to approved plans, specifications and other materials; or
- (3) The development or manner of development of any property within the Kealakekua Bay Estates; or
- (4) The execution and filing of an estoppel certificate pursuant to Section 5.7, whether or not the facts therein are correct; or
- (5) The performance of any other function pursuant to the provisions of this Declaration or the Design Requirements.

Neither Design Committee nor any member thereof shall be liable in damages to anyone submitting plans to them for approval, or to any Owner or other Person by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and specifications. Each owner or other Person who submits plans to the Design Committee for approval agrees, by submission of such plans and specifications, that the Person will not bring any action or suit against the Design

Committee or any member thereof to recover damages. Approval by the Design Committee or any member shall not be deemed to be a representation or warranty that the Owner's plans or specifications or the actual construction of dwelling or other Improvement comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and local building codes, and it shall be the sole responsibility of the owner or other Person submitting plans to the Design Committee or performing any construction to comply therewith.

5.09 Professional Advice. The Design Committee may employ the services of any attorney, architect, landscape architect, or structural or civil engineer licensed to practice in the State of Hawaii or any other consultant to render professional advice, and may pay a reasonable compensation for such service, which compensation may be charged to any Person who has submitted plans, specifications or other materials requiring review by such attorney, architect, landscape architect, engineer or consultant. Failure to obtain professional advice shall not constitute misconduct on the part of the Design Committee.

5.10 Non-Existence of Design Committee. In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be a Design Committee, or there shall not be the members necessary to act on a particular matter for which the approval or action by the Design Committee is required hereunder, and such situation lasts for a period of not less than twenty (20) days, then all matters requiring such approval or action may be approved or done by the president of the Association, or any vice-president thereof, and the president or vice-president's certificate that there has been no Design Committee, or that the required members were not present, and that the president or vice-president was acting pursuant to the authority of this Section, shall be conclusive between the Owners' Association, any other purchaser, lessee/mortgagee or other encumbrancer and any other Persons. The president or vice president acting hereunder shall be entitled to employ an architect or engineer to render technical advice and to receive reasonable compensation to be set by the Board for such services.

ARTICLE VI: PRIVATE ROADS AND STREETLIGHTS

6.01 Association Ownership and Maintenance. All of the roads and street lights within Kealakekua Bay Estate are private and shall remain private, i.e. shall not be dedicated to the County of Hawaii or the State of Hawaii. Therefore the roads and street lights within Kealakekua Bay Estate shall be owned and maintained by the Association as Common Areas. All maintenance, replacement and/or repair of these Common Areas, like all other Common Areas, shall be paid for by the Association from the Association operating fund and assessments pursuant to Article VI and Article VIII of this Declaration.

6.02 Dedication of Roads and Street Lights. The roads and street lights within Kealakekua Bay Estates cannot be dedicated to the County of Hawaii in their present condition because, although the main fifty foot (50') roads within Kealakekua Bay Estates are constructed to current County of Hawaii standards, the secondary sixteen foot (16') and twenty foot (20') roads and all of the street lights within Kealakekua Bay Estates do not meet current County standards. Therefore, if the members of the Association elect to dedicate either the roads or the street lights within Kealakekua Bay Estates, or both, those roads and/or street lights will have to be improved to the then existing standards of the County of Hawaii at the sole expense of the Association.

ARTICLE VII: KEALAKEKUA BAY ESTATES OWNERS' ASSOCIATION

7.01 Organization.

(a) The Association is a non-profit corporation, charged with the duties and empowered with the rights set forth herein and in its Articles and By-Laws. (b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Articles.

7.02 Membership.

(a) Each owner of any Lot within the Kealakekua BRY Estates shall be a member of the Association, provided, however, that no Person other than an Owner may be a member of the Association.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, the Articles and the By-Laws of the Association.

7.03 Voting Rights. The voting rights of the members shall be as set forth in the Articles and By-Laws, and the members shall be divided into two classes with voting powers as follows:

Class A. Each Owner, with the exception of the Declarant, shall have Class A voting rights, and shall be entitled to one vote per Lot. When more than one Person holds an interest in any Lot, all such Persons shall be members; and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. The Declarant shall have Class B voting rights, and shall be entitled to three (3) votes for each of its Lots for a total of one hundred sixty-five (165) votes, based upon 55 Lots for the entire Kealakekua Bay Estates. The Class B voting rights shall cease and be converted to Class A voting rights when the total number Class A voting rights then existing equals the total number of Class B votes then existing, or when the Declarant in its discretion so determines, whichever occurs first.

Notwithstanding anything to the contrary contained herein, the rights of members of the Association to voting shall be subject to the voting requirements of Chapter 415B, Hawaii Revised Statutes, for purposes of voting on matters specified in Chapter 415B.

7.04 Duties and Obligations of the Association. The Association shall have the rights, obligations and duties, subject to this Declaration, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of the Kealakekua Bay Estates.

(a) The Association shall accept title to all common areas and other property from time to time conveyed to it by the Declarant. The Association may also acquire and accept title to any other property real, or personal, nothing herein to be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, but the Association shall not carry on any business, trade, association or profession for profit.

(b) The Association shall maintain or provide for the maintenance of common areas and other property owned by the Association, including without limitation, security systems and improvements of whatever kind and for whatever purpose from time to time located on the common areas, if any, and other such property in good order and repair; provided, however, that notwithstanding the foregoing, the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, but may use all legal means to compel such Owner to maintain the same itself.

(c) The Association may maintain or provide for the maintenance of all Lots which are underdeveloped by the Owners. In an equitable manner and included in the Maintenance Assessments to be determined and set by the Board; provided, however, that an Owner may elect to be responsible for the maintenance on its Lot in accordance with standards established by the Board of the Association (the "Board") for all Lots.

(d) To the extent not assessed to or paid by the Owners, the Association shall pay all Real Property taxes and assessments levied upon any portion of the common areas.

(e) Unless provided by the State of Hawaii or the County of Hawaii, the Association may contract for, employ or otherwise provide police, security, and refuse disposal services, but the Association has no responsibility to provide such services.

(f) The Association shall obtain and maintain in full force the following policies of insurance:

(1) Fire and extended coverage insurance on all Improvements, if any, from time to time owned by the Association in such amounts and on such terms as may be determined from time to time by the Board.

(2) Comprehensive general liability insurance in such amounts and on such terms as may be determined from time to time by the Board of the Association, covering all Roads, drainage structures and easements through or adjoining Kealakekua Bay Estates, or arising out of ownership, maintenance or use thereof by the Association.

The policies referred to hereinabove shall name as insured, the Declarant (so long as the Declarant is the Owner of any Lots, the Association and its officers, the Board of the Association, and all of the members of the Board, the Design Committee and all of the members of the Design Committee, and with respect to any liability arising out of the maintenance or use of any common areas, the Owners. The Association may obtain and maintain in force any policies of insurance covering any other reasonable risk as may be determined to be proper and necessary or advisable in the discretion of the Board of the Association. Each and every policy of insurance obtained by the Association shall expressly waive any and all rights of subrogation against the Declarant, the Board and their respective representatives and employees, the Design Committee and its members, and against any Owner.

If the Declarant provides the insurance policies referred to above, the Association shall pay its pro rata share for the cost of the insurance.

(g) The Association shall from time to time make, establish, promulgate, amend and repeal rules relating to the use of the common areas in the Kealakekua Bay Estates.

(h) To the extent provided for in Article V, the Association shall exercise its rights to appoint and remove members of the Design Committee to ensure that at all reasonable times there is available a duly constituted and appointed Design Committee.

7.05 Powers and Authority of Association. The Association shall have all the powers set forth in the Articles, together with its general powers as a nonprofit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Articles and By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by the virtue of this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association, or for the peace, health, comfort, safety and general welfare of the Owners of the Kealakekua Bay Estates. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time, and from time to time and without liability to an Owner or Owners for trespass, damage or otherwise, to enter upon any private area for the purpose of maintaining and repairing any such area if for any reason whatsoever the Owner or Owners thereof fail to maintain and repair such area as required under Article III hereinabove, or for the purpose of removing any Improvement constructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any Roads, sidewalks, or other public areas in or adjoining the Kealakekua Bay Estates, including landscaping and planting the same and repairing Improvements thereon when public authorities, in the opinion of the Board, have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(b) In fulfilling any of its obligations or duties under this Declaration, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of the common areas and maintenance on the Lots, and to the extent necessary by the failure of the Owners thereof of private areas, or in exercising any of its rights to construct Improvements or other work upon any common area, the Association shall have the power and authority:

(1) To contract and pay for, or otherwise provide for, the maintenance, restoration and repair of all Improvements of whatever kind or for whatever purpose from time to time located upon common areas, and to contract and pay for, or otherwise provide for, the construction of Improvements or other work upon common areas, or otherwise, in carrying out its functions as set forth in this Declaration on such terms and conditions all the Association deems appropriate, and to pay and discharge all liens arising out of any work;

(2) To obtain, maintain and pay for such insurance policies or bonds, whether or not required by Section 7.04, as the Association deems appropriate for the protection or benefit of the Kealakekua Bay Estates, the Association, the memberd of the Board, the members of the Design Committee, or the Ownerd, including but without limitation, war risk insurance, builders' risk insurance, workers' compensation insurance, malicious mischief insurance, automobile, non-ownership insurance and performance and fidelity bonds;

(3) To contract and pay for, or otherwise provide for, utility services including, but without limitation, water, ,sewer, garbage, electrical, telephone, cable television and gas services as may from time to time be required;

(4) To contract and pay for, or otherwise provide for, the services of architects, attorneys, and certified public accountants, or such other professional or non-professional services as the Association deems necessary;

(5) To contract and pay for, or otherwise provide for fire, police and such other protection services as the Association, from time to time, deems necessary for the benefit ()f the Kealakekua Bay Estates, any property located within the Kealakekua Bay Estates and the Owners; and

(6) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any common areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the common areas, or upon any personal property belonging to the Association; provided, however, that prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.

(d) The Association shall have the authority to exchange, to sell and convey, or to otherwise dispose of, for cash or on such terms as it shall approve, any portion or portions or. the common area with or without Improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the Owners, and to borrow money, without limit as to the amount, for any purpose with the powers and authority of the Association or any part thereof; provided, however, that no such exchange, sale or other disposition of any teal property in fee, and no such borrowing and mortgaging, shall be made unless the same shall have been approved by an affirmative vote of not less than two-thirds (2/3) of each class of members who may vote in Person or by proxy at a meeting of the Association duly called, the Notice for which shall describe the Real Property to be sold or otherwise disposed of, or the amount of the borrowing and the security to be mortgaged, and shall be invested by the Association in additional property acquired for the benefit of the Association and l:hn Owners, or in improving the properties of the Association.

7.06 Liability of Members of the Board. No member of the Board shall be personally liable to any Owner, guest, lessee, or to any other Person, including the Declarant, for any error or omission of the Association, its representatives and employees, or the Design committee; provided, however, that such member has, with actual knowledge possessed by that member, acted in good faith.

7.07 Exclusive Owners of the Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (d) inclusive of Section 7.05.

ARTICLE VIII: FUNDS AND ASSESSMENTS

8.01 Operating Fund. There shall be an operating fund in which the Association shall deposit all monies paid to it as:

(1) Maintenance Assessments;

(2) Special assessments;

(3) Miscellaneous fees; and

(4) Income and profits attributable to the operating fund, and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

8.02 Maintenance Assessment.

(a) within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article VII (including a reasonable provision for contingencies, reconstruction and replacements and for alterations, modifications and Improvements to existing facilities, and in paying all expenses of the Design Committee and its operations), and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any accrued reserves from contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to assessments.

(b) The sum or net estimate determined pursuant to this Section (a) shall be divided and assessed by the Board as a Maintenance Assessment against the Owners in proportion to the number of Lots owned by each Owner.

(c) Any increase in Maintenance Assessments in any amount which is 10% greater than the previous year's Maintenance Assessment must be approved by an affirmative vote of a majority of the Board.

(d) If at any time, and from time to time, during any fiscal year, the Maintenance Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy, which further assessment shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(e) Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with assessments, including without limitation, the power and authority to determine where, when and how assessments shall be paid to the Association, and each Owner shall comply with all such determinations. Assessments shall become due and payable as specified by the Board, and in any event, thirty (30) days after any Notice of the amount due is given by the Association to the Owner, and any such amount shall bear interest at a rate specified by the Board, but in no event greater than the maximum amount permitted by law, from the date due and payable until paid.

8.03 Special Assessments. The Board shall levy a special assessment against any Owner who, as a direct result of whose acts or failure or refusal to act or to otherwise comply with this Declaration, or the Design Requirements, has caused monies to be expended from the operating fund by the Association in performing its functions under this Declaration. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied, together with interest thereon as provided for in Section 8.02 hereof. Monies so expended shall include, without limitation, actual engineers', architects', attorneys' and accountants' fees where reasonably incurred by the Association.

8.04 Default in Payment of Assessments.

(a) Each assessment under this Article shall be a separate, distinct, personal debt and obligation of the Owner against whom it is assessed, and each Owner of any Lot, by acceptance of a deed therefor or execution of an agreement of sale, lease or other instrument of conveyance, whether or not it shall be so expressed in any such deed, agreement of sale, lease or conveyance, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest as provided for in Section 8.02 hereof and actual costs, including reasonable attorneys' fees and court costs, shall be and become a lien upon the Lot or Lots of such Owner upon Recordation by the Association of a Notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the Lot or Lots of such Owner, and the sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which become due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such Notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as a mortgage of Real Property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Lot or Lots, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

ARTICLE IX: MISCELLANEOUS PROVISIONS

9.01 Enforcement of Declaration. Each provision of this Declaration shall be enforceable by Declarant, by the Association, or by any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith including reasonable attorneys' fees and court costs.

9.02 Amendment. Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto: (i) by the Recording of a written instrument or instruments specifying the amendment or change, signed by Owners who hold not less than seventy-five percent (75%) of the voting power of the Association and by Declarant or its assigns, except that Article IV can only be amended with the consent, in writing, of the County of Hawaii Planning Director, or the Planning Director's successor; or (ii) by Declarant at any time prior to the first sale by Declarant of an interest in any Lot in the Kealakekua Bay Estates by Recording a written instrument specifying the amendment or change, signed by the Declarant.

9.03 Violations by Family Members or Guests. A violation of any provision of this Declaration by any Owner's guest, invitee or family member shall be treated as a violation by such Owner and shall be enforceable in accordance with the provisions hereof.

9.04 Subdivision and Consolidation.

(a) No Lot within the Kealakekua Bay Estates shall be subdivided by any Owner.

(b) Nothing contained in this section shall apply to the consolidation of two or more Lots into one or more Lots by the Declarant.

9.05 Ohana Dwellings Prohibited. No ohana dwelling, as defined by Chapter 25 (Zoning) of the Hawaii County Code or any amendment thereof, shall be permitted on any Lot in the Kealakekua Bay Estates.

9.06 Condominium Property Regimes Prohibited. Condominium property regimes, as defined by Chapter 514A, Hawaii Revised Statutes, or any amendment thereof, shall be prohibited on any Lot or portion thereof in the Kealakekua Bay Estates.

9.07 Duration of Declaration. This Declaration and its covenants, conditions and restrictions contained herein, as amended from time to time, shall run with the land and shall be and remain in full force and effect for a term of twenty (20) years from the date of Recordation of this Declaration; after which time said Declaration shall be automatically extended for successive period of ten (10) years, unless an instrument, in writing signed by no less than seventy-five percent (75%) of the then Owners of Lots within the Kealakekua Bay Estates (based on one vote per Lot), has been Recorded at least one (1) year prior to the end of any such period, agreeing to change or terminate this Declaration or said covenants, conditions, and restrictions in whole or in part.

9.08 Conveyance of Common Area: Reservation of Easements and Rights-of-Way and Classification of Land Area, Sewer and Water System.

(a) The Association shall accept all of the Real Property and interests in Real Property conveyed to it as Common Areas by the Declarant; provided that the Association need not accept any such property in fee subject to any exceptions, liens and encumbrances, except as follows:

(1) The lien of any Real Property taxes and assessments;

(2) Any easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant or granted to any Owner in accordance with the provisions of this Declaration;

(3) Any easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant for access to Real Property contiguous to the Common Areas, and such easements and rights-of-way on, over or under all or any part thereof as may be reserved by this Declaration or granted to or for the benefit of the United States, the State of Hawaii, the County of Hawaii, or any other political subdivision or public organization, any public utility corporation, or any Lot for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder at any time or at any time in the future, (i) roads, streets, driveways, walls, parkways and park areas, (ii) poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for necessary facilities in connection therewith, and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, water sprinkler systems, water, heating and gas lines or pipes, and any and all equipment in connection therewith;

(4) The obligations imposed directly and indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States, the State of Hawaii, the County of Hawaii or any other political subdivision or political or governmental organization having jurisdiction over such property;

(5) The rights reserved to the Declarant pursuant to this Declaration;

(6) Easements for roads, pipelines, ditches, telephone, gas, and electric lines and any other utilities in favor of public utilities, governmental agencies or private corporations or individuals; and

(7) Any other lien, encumbrance or defect in title of any kind whatsoever (other than of a type which would at any time or from time to time create a lien upon such properties to secure an obligation to pay money) which would not materially and actually prejudice the Owners in their use and enjoyment of such Property.

(b) The land classification of any property within the Kealakekua Bay Estates which is not a Common Area may be changed to a common area by the transfer of such property to the Association from all Persons having any right, title or interest therein, and the acceptance by the Association of such property. Notwithstanding anything else herein, the Declarant may change the land classification of any property not previously designated as a common area and to which it is the Owner and may convey such property to the Association pursuant to the provisions of paragraph (a) of this Section hereinabove, and the Association shall accept the same and such property shall thereupon become common area for all purposes hereunder.

(c) At any time, and from time to time following conveyance of common area by the Declarant to the Association pursuant to this section, the Declarant may construct, reconstruct, refinish or alter any Improvement upon, or make or create any excavation on or Fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area, if the Declarant determines that any such work (i) is reasonably necessary for any utility installation serving any property within the Kealakekua Bay Estates, (ii) is reasonably necessary for the construction of any facility for use by the Owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such Common Area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of the Kealakekua Bay Estates.

9.09 Effect of provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration:

(a) Shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Kealakekua Bay Estates or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(b) Shall, by virtue of acceptance of any right, title or interest in the Kealakekua Bay Estates or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with, and for the benefit of each and every other Owner; and

(c) Shall be deemed a real covenant by Declarant itself, its successors and assigns, and also as an equitable servitude, running, in each case, as a burden with and upon the title to the Kealakekua Bay Estates and each Lot and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Kealakekua Bay Estates and each Lot.

9.10 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defend render invalid or impair the lien of any mortgage or other lien on any Lot taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Lot and listing the name or names of the Owner or Owners of fee simple title to the Lot and giving Notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce the holder of any such mortgage, or other lien, or title, or interest acquired by any purchaser upon foreclosure of any such mortgage or other lien (or upon conveyance in lieu of foreclosure) result in

any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien (or conveyance in lieu of foreclosure), no such holder who thereby assumes title to a Lot shall be required to correct past violations hereof with respect to said Lot so long as said lot is neither occupied nor used for any purpose by such holder but is merely held for prompt resale, and provided that all money obligations accruing pursuant to this Declaration subsequent to such foreclosure or such conveyance in lieu of foreclosure shall be paid by such holder. Any such purchaser on foreclosure or other purchaser or holder shall, however, take title subject to this Declaration.

9.11 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts of the Kealakekua Bay Estates as set forth In this Declaration, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over the Kealakekua Bay Estates.

9.12 Assignment of Property. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to any Person or Persons or to the Association. Any such delegation, transfer, assignment conveyance or release shall be effective upon the Recording by the Declarant of a notice of such transfer, assignment, conveyance or release.

9.13 Limited Liability. Neither Declarant, nor the Association, nor the Design Committee, nor any officer, director agent or employee of any of the foregoing, shall be personally liable to any Owner or to any other party for any damage, loss or prejudice claimed on account of any act, omission, error or negligence of Declarant, or the Association, or the Design Committee, or any officer, agent or employee of any of the foregoing, provided that the Person against whom the claim is made has, upon the basis of such information as may be actually possessed by that Person, acted in good faith and without willful or intentional misconduct.

9.14 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant and each Owner and the heirs, personal representatives, successors and assigns of each.

9.15 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

9.16 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

9.17 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

9.18 Further Assurances. Each Owner hereby agrees to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

9.19 Notices. Any Notice, information or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually received such Notice, information or material.

9.20 Word Usage. Any use of the masculine, feminine or neuter gender herein shall be deemed to include all such genders and any use of the singular or plural shall be deemed to include the other, whenever the context so requires.

9.21 Condemnation of Common Area. If at any time, or from time to time, all or any portion of the common area or any interest therein be taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such

award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interest of all Owners.

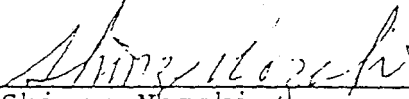
9.22 Obligations of Owners, Avoidance, Termination.

(a) No Owner, through its non-use of any common area or abandonment of its Lot, may avoid the burdens or it by this Declaration by virtue of being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot and payable after the date of such transfer, and no Person, after the termination of the Owner's status as an Owner and prior to the Person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration following the date of such termination.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year first above written.

T. RED CO., INC.
a Hawaii corporation


Shinzo Nozaki
Its Vice President

On this 7th day of January, 1992

before me appeared SHINZO NOZAKI, to me personally known, who being by me duly sworn, did say that he is the vice President of T.Red Co., Inc., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

