

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS FOR KAOHE RANCH SUBDIVISION

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THIS DECLARATION is made this _____ day of _____, 1990, by GENE L. HENRY, with his principal place of business and post office address at 1416 3rd Avenue, Seattle, Washington 98101, hereinafter referred to as the "Declarant".

W I T N E S S E T H

WHEREAS, Declarant is the fee simple owner of certain real property situated at Kaohe 4, South Kona, Hawaii, and encompassing Tax Map Key 3/8-7-8-8, including all subsequent tax map key parcels within, County and State of Hawaii, more particularly described in Exhibit A attached hereto; and

WHEREAS, Declarant is the owner of that certain roadway, easements and roadway improvements which provide access and/or utilities to and within said real property described in Exhibit A and may in the future provide access to other real property situate at Kaohe 4, South Kona, Hawaii, which is not owned or controlled by Declarant; and

WHEREAS, Declarant has constructed certain roadway improvements within and/or providing access and/or utilities to and within said real property described in Exhibit A attached hereto, and Declarant may, in the future, construct additional and/or alternate roadway and/or utility improvements in order to increase the usefulness, economic value desirability, and attractiveness of said real property to its owners; and

WHEREAS, Declarant intends to provide for the continued maintenance and upkeep of the existing and future roadway and utility improvements for the benefit of all of said real property, with the cost of such maintenance and upkeep to be shared by all owners of said real property benefiting therefrom to the extent that such owners are subject to assessment hereunder or may be otherwise required to contribute to such cost (it being understood that the owners of certain lots which are not owned or controlled by Declarant may not be required to share in such costs); and

WHEREAS, Declarant intends to provide for the further development of the real property described in Exhibit A in a manner which, to the extent possible, will increase the economic value, desirability and attractiveness of said real property to its owners;

NOW, THEREFORE, Declarant hereby declares that all of its right, title and interest in the real property included in the Kaohe Ranch Subdivision, as hereinafter defined, shall, at all times, be owned, held, used and occupied subject to the

together with all rights and interests appurtenant thereto and all improvements located thereon. It is expressly provided that Lot 1 is not subject to this Declaration of Protective Covenants, Conditions and Restrictions.

1.7 Lot. "Lot" means each of the subdivided Lots shown on Exhibit B attached hereto, being Lots 1-13 of the Kaohe Ranch Subdivision, or any portion of other real property annexed hereto or any portion of other real property annexed hereto which is a legally subdivided Lot in accordance with the subdivision ordinances of the County of Hawaii, other than a roadway Lot or other Lot used exclusively for roadway or utility purposes. It is expressly provided that Lot 1 is not subject to this Declaration of Protective Covenants, Conditions and Restrictions.

1.8 Owner. "Owner" means any person (including Declarant) who is the record Owner of a fee simple interest in any Lot; PROVIDED, HOWEVER, that the lessee (or if there is a sublease, then the sublessee), under a recorded lease or sublease of any Lot for a term of more than thirty (30) years, and the purchaser under a recorded agreement of sale for any Lot shall be deemed to be the Owner of such Lot, to the extent provided in such lease or agreement of sale. In the event of a dispute or conflict between the fee simple Owner and any such lessee, sublessee or purchaser, as to who shall be the Owner for purposes of this Declaration, then the fee simple Owner shall be deemed to be the Owner until such dispute or conflict is resolved. Any person who holds any interest in a Lot merely as security for the performance of any obligation shall not be deemed an Owner.

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

1.10 Road System. "Road System" means those certain roadways designated as the "Road System" on the map attached as Exhibit B hereto and made a part hereof (including all areas within such roadways and/or easements up to the right-of-way line) also known as Easement A-1 more fully described in Exhibit C, attached hereto providing access to and within the Kaohe Ranch Subdivision Lots as well as other property; provided that the Road System may be improved and realigned as provided in Section 4.1 hereof and upon such improvement and/or realignment, the "Road System" shall mean said roadway, as realigned and improved; and provided further, however, that any portion or portions of such roadway which are dedicated or conveyed to the County of Hawaii, State of Hawaii or other governmental authority shall cease to be a part of the Road System immediately upon such dedication or conveyance and the acceptance thereof by said governmental authority.

1.11 Record. "Record", "Recorded" or "Recordation" means, with respect to any document, the recordation or filing of

maintenance, repair or improvement of the Road System, to enforce this Declaration of Protective Covenants, Conditions and Restrictions, and to undertake such functions and actions as determined by the Owners for their mutual benefit; provided, however, that the Homeowners' Association shall not commence any actions or operations until a Notice of Commencement of Operation is provided by Declarant to all such Lot Owners. Declarant may activate the Homeowners' Association at any time after the date hereof by providing such a Notice of Commencement of Operation to all Homeowners' Association Lot Owners, and Declarant shall so activate the Homeowners' Association upon the written request of forty percent (40%) of the Homeowners' Association Lot Owners. Upon dissolution of the Homeowners' Association, its assets, if any, shall be conveyed to its members with the percentage of interest conveyed to each such member being equal to a fraction, the numerator of which is the number of Lots within the Homeowners' Association Lots which are owned by such member at the time of dissolution, and the denominator of which is the total number of Homeowners' Association Lots at the time of such dissolution.

2.2 Membership. Each Owner of a Homeowners' Association Lot, by virtue of being such an Owner and for so long as he is such an Owner, shall be a member of the Homeowners' Association. The Owners of Lots added to the Homeowners' Association Lots as provided in Section 4.4 shall become members of the Homeowners' Association upon the recordation of the Annexing Declaration annexing such Lots. The Homeowners' Association may also accept as associate members any other Owners of real property which are provided access to a public highway over any portion of the Road System but is not subject to the provisions hereof, if such Owners agree to pay Homeowners' Association assessments and road maintenance assessments and to be bound by the Articles, By-Laws, and rules and regulations of the Homeowners' Association.

2.3 Board of Directors. The affairs of the Homeowners' Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee composed of not fewer than two (2) Directors. The number and qualifications of Directors shall be as provided in the Articles and By-Laws of the Homeowners' Association.

2.4 Voting Rights. Voting by proxy shall be permitted. The right of each Owner to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the estate of an Owner in his Lot shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Each Owner, including Declarant, shall have one vote for each Homeowners' Association Lot which he owns. In the event of multiple Owners of the same Lot, the multiple Owners

property in good, clean, attractive and sanitary condition, order and repair; repairing wind and other damage caused by the elements; and upon such vote of the Association as is required hereunder or under its Articles and By-Laws, making such alterations, additions, betterments or improvements to or on said property which are deemed necessary or appropriate by the Association.

3.3 Labor and Services. The Homeowners' Association may obtain and pay for the services of any person to manage its affairs, or any part thereof, to the extent it deems advisable, as well as the services of such other personnel, including independent contractors, as the Association shall determine to be necessary or desirable for the proper operation of its property, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts.

3.4 Association Functions. The Homeowners' Association may undertake or contract for any lawful activity, function or service for the benefit of its members; provided that such activity, function or service is within the scope of the purposes of the Association as set forth in this Declaration. The Homeowners' Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder. The activities, functions or services undertaken or contracted for by the Association shall include, without limitation, the providing of legal and accounting services necessary or desirable in connection with the enforcement of this Declaration; the granting or conveying of easements or rights of way over, across, along or under any real property of the Association; and the enforcement of all rights granted to the Association in any lease, sublease, easement or other instrument.

3.5 Personal Property of the Homeowners' Association. The Homeowners' Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.6 Real Property of the Homeowners' Association. The Homeowners' Association shall accept fee simple title to a leasehold or subleasehold interest in, or any easement or right of use in, all real property from time to time conveyed to it by Declarant or at the direction of Declarant; provided that the Association need not accept any such real property subject to a lien upon such real property securing or evidencing an obligation to pay money except a lien for non-delinquent real property taxes and assessments. Without limiting the generality of the foregoing, the Homeowners' Association shall, at the direction of Declarant, accept fee simple title to a leasehold or subleasehold interest in, or any easement or right of use in all or a portion of the Road System.

3.11 Implied Rights. The Declarant and the Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE 4. ROAD SYSTEM.

4.1 Construction of Road System Improvements. In order to provide better access and utilities to and within the Lots within the Kaohe Ranch Subdivision Lots, the Declarant shall have the right, but shall not be obligated to, improve, realign, extend or add to the Road System, along the route referred to in Exhibit B attached hereto and made a part hereof.

4.2 Cost Sharing for Road Maintenance and Improvement. Each Owner of a Homeowners' Association Lot shall be responsible for and shall pay to Declarant (or to the Homeowners' Association, at such time that the obligation for road maintenance is assigned to the Homeowners' Association), a proportionate share of the actual annual cost of road maintenance, improvement, realignment and/or extension of the Road System, whether by Declarant or the Association. Each such Lot Owner's share of said costs shall be equal to a fraction of such costs, the numerator of which fraction shall be the total number of lots of the Homeowners' Association Lots owned by such Owner, and the denominator of which shall be the total of all Homeowners' Association Lots and all other Lots otherwise required to contribute to the cost of road maintenance. Each Lot Owner's share of such costs and expenses for road maintenance (the "road maintenance assessments") shall be due and payable in annual, quarterly, or monthly installments as determined by the Declarant or the Homeowners' Association, as appropriate, and shall be due within thirty (30) days after the mailing of notice of assessment by the Declarant or the Homeowners' Association as appropriate. Lot 1 is to be exempt from any payments for road maintenance and shall not be counted when determining the fractional share of costs.

4.3 Increased Use of Road System. Declarant shall have the right at any time to grant easements and/or other rights over the Road System to any other persons and/or entities, with the right to charge such fees as it deems appropriate for the grant of such easements or other rights, and none of the Homeowners' Association or any other Owners of Lots shall be entitled to receive any portion of such fees. In the event that the use of the Road System is expanded to permit access by such additional persons and/or entities, Declarant shall require such additional users to pay a proportionate share of the costs of road maintenance and improvement, such share to be calculated in accordance with the formula set forth in Section 4.2, as if the

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

shall deliver to Declarant evidence of a comprehensive general liability policy including broad form liability endorsement, insuring the Homeowners' Association and the Declarant against loss or damage to third parties or their property from excavation, pile driving, loss of subterranean support and other hazards normally insured against in the construction industry. The Homeowners' Association shall pay Declarant a reasonable processing charge, including the fees of Declarant's architects and/or engineers, in connection with any plans and specifications submitted to Declarant for its approval. Notwithstanding anything to the contrary contained herein, neither Declarant's approval or the approval of any architect or engineer engaged by Declarant, of any plans and specifications submitted to Declarant or such architect or engineer, shall be deemed a warranty or other representation on Declarant's part to any person that such plans and specifications, or the improvements therein described are legal or structurally safe or sound.

4.6 Assessment for Improvement of Road System by Homeowners' Association. Each Owner of a Homeowners' Association Lot shall be responsible for and shall contribute to the cost of any improvement of the Road System undertaken by the Homeowners' Association or the Declarant pursuant to Section 5.8. The cost of such improvements shall be included in the operating budget of the Homeowners' Association and shall be collected as part of the Homeowners' Association assessments as provided in Section 2.8 and Article 4 hereof. Lot 1 shall not be included in any assessments for maintenance and/or improvements of the Road System by the Homeowners' Association or otherwise.

4.7 Lien for Road Improvement Assessments and Road Maintenance Assessments. The Declarant, for each Lot it owns within the Kaohe Ranch Subdivision Lots, hereby covenants and agrees, and each Owner of a Lot with Kaohe Ranch Subdivision Lots, whether or not it shall be so expressed in such deed or conveyance, covenants and agrees to pay to the Declarant and/or the Homeowners' Association the road improvement assessments, the Homeowners' Association assessments, and the road maintenance assessments assessed against each such Owner's Lot as provided herein. All such road improvement assessments, Homeowners' Association assessments and road maintenance assessments, together with late charges, interest, costs and reasonable attorneys' fees, shall be a charge on the land, and the Declarant shall have a continuing lien against the Owner's interest in such Lot to secure payment of any such assessment, charge or other amount due and owing to the Declarant with respect to the Owner or such Owner's Lot, plus late charges and interest as provided in Section 5.5, from the date due and payable until paid, plus all costs and expenses of collecting the unpaid amount, including attorneys' fees.

ARTICLE 5. ASSESSMENTS.

Subject to the provisions hereof, the Declarant, and the Board of the Association, shall have the power and authority to determine all matters in connection with the assessments payable to it, including, without limitation, power and authority to determine where, when and how such assessments should be paid, and each Owner shall comply with all such determinations.

5.2 Determination of Amount of Assessments. If the Declarant or Homeowners' Association Board fails to determine or cause to be determined the total amount to be raised by its assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amount of such assessments for any fiscal year or partial fiscal year, then the amounts of assessments shall be deemed to be the amount assessed in the previous fiscal year or partial fiscal year.

5.3 Time for Payments. The amount of any assessment, charge or other amount payable with respect to any Owner or such Owner's Guests or Lot, shall become due and payable as specified by whichever of the Declarant or the Homeowners' Association Board is entitled to collect such amount and, in any event, thirty (30) days after any notice of the amount due as to such assessment, charge, or other amount shall have been given by the Declarant or the Association to such Owner, and any such amount shall bear interest at a rate specified by the Declarant or the Homeowners' Association Board but in no event greater than the maximum amount permitted by law from the date due and payable until paid.

5.4 Lien for Assessments and Other Amounts. The Declarant, for each Lot it owns within Kaohi Ranch Subdivision Lots, hereby covenants and agrees, and each Owner of a Lot, by acceptance of a deed or other conveyance of such Lot, whether or not it shall be so expressed in such deed or conveyance, covenants and agrees to pay to the Declarant and the Homeowners' Association the road improvement assessments, the road maintenance assessments, the Homeowners' Association assessments, supplementary assessments and special assessments assessed against the Owner's Lot as provided herein. All such assessments, together with late charges, interest, costs and reasonable attorneys' fees, shall be a charge on the land and the Declarant and the Homeowners' Association shall have a continuing lien against the Owner's interest in such Lot to secure payment of any such assessments, charge or other amount due and owing to the Declarant and/or the Homeowners' Association with respect to the Owner or with respect to such Owner's Lot, plus late charges, and interest as provided in Section 5.5, from the date due and payable until paid, plus all costs and expenses of collecting the unpaid amount, including attorneys' fees.

5.5 Effect of Nonpayment of Assessment; Remedies of Declarant and Association. Any assessment, or any installment

5.7 Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner the Declarant and/or the Homeowners' Association shall furnish a written statement setting forth the amount of assessments or charges, if any, due or accrued and then unpaid with respect to the Owner, the Lot owned by such Owner and such Owners's Guest and the amount of any assessments for the current fiscal period of the Declarant and the Homeowners' Association payable with respect to the Lot owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Declarant or the Homeowners' Association that no greater or other amounts were then due or accrued and unpaid.

5.8 Liability of Owners and Purchasers. The amount of any assessment or charge owing to the Declarant or the Homeowners' Association by any Owner under this Declaration shall be a joint and several obligation to the Declarant or the Association, of such Owner and such Owner's heirs, personal representatives, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Declarant or the Association without foreclosing or waiving any lien securing the same.

ARTICLE 6. INSURANCE.

6.1 Insurance Requirements Generally. The Homeowners' Association shall obtain and maintain in full force and effect at all times certain liability and other insurance as hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to do insurance business in the State of Hawaii. All such insurance shall name as insured the Association, its Board, and all of its officers, directors, employees and agents. All such insurance shall protect each of the insured as if each were separately insured under separate policies. To the extent reasonably practicable, such insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Association, the Board, and any of their officers, directors, employees, and agents, and against each Owner and each Owner's employees and Guests; (ii) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, the Board, or any of their officers, directors, employees or agents, or of any Owner or such Owner's employees or Guests; (iii) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee; (iv) contain a standard mortgage clause endorsement in favor of the mortgagee of any part of the real property owned by the Association except a mortgagee who is covered by other and separate insurance; and (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least sixty (60)

employees and agents of the Association.

6.7 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Lot, or of any Owner-installed improvements upon any Lot, the premium of any policy of insurance purchased by the Association is increased, or a special policy is required, the cost of such increase or specific policy shall be payable by the Owner of such Lot.

ARTICLE 7. ANNEXATION OF ADDITIONAL PROPERTY.

7.1 Declarant's Rights. Declarant shall have the right to expand by annexing to Kaohe Ranch Subdivision Lots, all or any portion of the land located on the Island of Hawaii whether contiguous to Kaohe Ranch Subdivision Lots or not. Upon any such annexation, the owners of the land so annexed shall become members of the Homeowners' Association and shall be subject to all covenants, conditions, restrictions, easements, charges and liens as set forth herein. Assessments shall commence with respect to property so annexed on the first day of the month subsequent to the date of such annexation on a prorata basis.

7.2 Limitation on Declarant's Rights. Declarant's right to annex land pursuant to Section 7.1 shall expire with respect to any land not annexed on or before the thirtieth (30th) anniversary date of the recordation of this Declaration; provided, however, that Declarant, at its sole option, may provide for an earlier expiration date of its right to annex such land, by recording an Amendment to this Declaration setting forth such earlier expiration date; and provided further that such right shall in any event terminate no later than twenty-one (21) years following the death of George Bush, President of the United States of America, Frank Fasi, Mayor of the City and County of Honolulu, and all of their descendants living on the date of execution hereof.

7.3 Annexing Declaration. Any expansion of Kaohe Ranch Subdivision Lots by annexation may be accomplished by the recording by Declarant of an Annexing Declaration, with the consent of the owners of the land annexed, containing a legal description of the land so annexed and providing that such land shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration. If the lands so annexed are provided access to a public highway over any portions of the Road System, the Annexing Declaration shall also provide that such property is included in the Homeowners' Association Lots.

7.4 Expansion of Definitions. In the event of such expansion by annexation, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Kaohe Ranch Subdivision Lots as so expanded.

are under the same Ownership may be combined and developed as one Lot, provided, however, that the number of votes originally assigned to such adjoining Lots and the obligation to pay assessments for each of said adjoining Lots shall not be altered by such consolidation. Easements created or established by Declarant along the common boundary line of the combined parcels may be changed provided that the consents of Declarant and the Association are obtained and provided that alternate easements are granted or created, satisfactory to Declarant and the Association, by the Owner of the combined Lots.

9.3 Flooding and Erosion Control. No Owner shall permit to be constructed on his Lot any improvements which will create a problem of flooding, erosion or interference with natural water flow or runoff damage to his Lot 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 at all times cooperate with Declarant and the agents and/or representatives of the Soil Conservation Service of the Department of Agriculture of the United States government, and shall do and perform, at its own cost and expense, all work, procedures or other work with respect to such Owner's Lot, to the fullest extent as may be suggested or advised by said agents and/or representatives.

9.4 No Hazardous Activities. No activity shall be conducted on any Lot and no improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no hunting shall be allowed on any Lot.

9.5 Commercial Use. No Owner shall conduct any commercial enterprise on his Lot until he has submitted to the Homeowners' Association Board a plan outlining the type of commercial enterprise and evaluation by the Lot Owner of any impact which such commercial enterprise may have on the subdivision. The Homeowners' Association Board may deny permission for such commercial enterprise if, in its opinion, such commercial enterprise may impact negatively by way of noise, smell, visual interference, or other negative impacts on the subdivision. The Homeowners' Association Board may make such suggestions and/or conditions for approval of such commercial enterprise. In the event the Homeowners' Association Board does not act on any submitted plan within thirty (30) days of submission, the commercial activity will be deemed approved. Nothing in this provision shall take away any right of any Owner or the Association to take any necessary action to abate a nuisance.

9.6 Use of Road System. No vehicle parking shall be permitted on the Road System, other than under emergency

9.12 Permissible Structures. There may be one (1) unattached guest house, the size of which shall not be larger than the primary residence. In addition, an "ohana" house shall be permitted with its own unattached guest house. A Horizontal Property Regime will be permitted enabling a particular lot to hold two (2) separately owned houses, provided, however, that if this is done, the second structure will be deemed to constitute a separate lot for purposes of membership in the Homeowner's Association and will be responsible for payment of a "full share" of the monthly maintenance fees.

9.13 Location of Structure. No structure shall be built within fifty (50) feet of a principal roadway, or within thirty (30) feet of any boundary, without Architectural Committee approval. Said approval shall be granted only for sufficient cause.

9.14 Height Limitation. No structure shall be more than thirty (30) feet in height, measured from the highest finished grade within the perimeter of the structure. Chimneys are excepted from this provision. No structure shall block the seaward or coastal view, in any direction, of the primary residence of another lot Owner. This includes trees or foliage, which must be removed or trimmed at the request of a neighbor whose view has been blocked, provided, however, that said neighbor shall bear the expense of said trimming or removal.

9.15 Two-Story Structures. Any two-story building shall have its second floor stepped back from the first floor on the front and rear lot line elevations of the building, and no wall shall continue vertically for an uninterrupted distance of more than fifteen (15) feet. The floor area of a second floor shall not exceed sixty percent (60%) of the floor area of the first floor. Structures with "A-frame" roof lines and factory built structures which have been preassembled or pre-cut for assembly shall be prohibited.

9.16 Garages. All houses shall have a minimum of two (2) covered parking spaces, either a garage or carport. No garage or carport may open onto a common roadway unless it has a door.

9.17 Vehicular Access. No vehicular access shall be permitted from a common roadway directly to a Lot except over driveway areas approved by the Architectural Committee. All such driveways shall be at least twelve (12) wide and be constructed of either asphalt or concrete.

9.18 Construction Material. Material shall be new and of a quality consistent with that used on quality custom-designed homes. All building materials shall be installed in a neat and

9.26 Glare Prevention. To avoid glare, all exposed glass areas of buildings shall have an overhang along their entire length. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces, including without limitation roofs, projections above roofs, exterior walls, retaining walls, doors, trim, fences, pipes, permanent outdoor equipment mailboxes and newspaper tubes. This includes solar hearing roof panels, which should be integrated into the roof and which shall be subject to review and approval of the Architectural Committee.

9.27 Fencing. All running fences shall be three-rail horse ranch style, white in color. No barbed wire or wire fencing of any kind will be permitted.

9.28 Foundations. It is the responsibility of the Owner to conduct an independent soil investigation if deemed necessary by the County Building Department. High unusable areas under wall lines should be enclosed. All piers and posts of building foundations should be concealed from view. Height shall be designated by a State of Hawaii registered architect or civil/structural engineer. Maximum height of exposed retaining walls shall be nine (9) feet unless specific approval is obtained from the Architectural Committee. Such walls shall be terraced or stepped back.

9.29 Underground Utilities. There shall be no overhead electrical or telephone wiring permitted within the development. Overhead lines will come to the north and south boundaries of the subdivision. It shall be the responsibility of the property owner to run the wires underground to his dwelling and/or adjacent out-buildings and structures.

9.30 Noise. No machinery or other device shall be operated which shall make noise disruptive to the peace and tranquility of any neighboring property owner except construction or farm machinery. Any commercial enterprise utilizing farm machinery operated on a continuous or daily basis shall not be permitted if disruptive to the peace and tranquility of the adjoining property owners. Any such enterprise shall conform to all zoning requirements. Construction shall be limited to the hours of 7:00 a.m. to 6:00 p.m.

9.31 Riding trails. All trails designated on the subdivision map shall be maintained in a passable manner by the Homeowners' Association. Any fencing along the common easements shall be initially constructed by the developer but shall be maintained at the expense of the Homeowners' Association.

9.32 Improvements Affecting Roads. No improvements or alterations to any Lot which affect or connect to the Road System, including, without limitation, the placement of water,

sufficient to confine the cattle or other livestock within that part of the Lot used for such purposes. Each Owner will at all times maintain and keep at Owner's sole cost and expense such stockproof fence or stone wall in good repair, order and condition. Horses shall be limited to three (3) per five (5) acre parcel and cows shall be limited to one (1) per lot. Animal pens shall be properly maintained so as not to permit a health problem.

ARTICLE 10. EASEMENTS.

10.1 Easements in Lots for Repair, Maintenance and Emergencies. The Declarant and the Homeowners' Association shall each have an easement for access through each Lot for making emergency repairs thereon necessary to prevent damage to their respective property or to another Lot. Nothing herein shall be deemed to obligate Declarant or the Association to make any such emergency repairs.

10.2 Negligence or Willful Misconduct. Any damage to any Lot caused by the gross negligence or willful misconduct of the Declarant or the Homeowners' Association or any of their respective agents during any entry onto any Lot shall be repaired by and at the expense of the Declarant or the Homeowners' Association.

ARTICLE 11. MISCELLANEOUS

11.1 Enforcement. The Architectural Committee, the Homeowners' Association, or any Lot Owner in the Kahe Subdivision may bring action to enforce the terms and conditions of these covenants, conditions and restrictions.

11.2 Duration of Declaration. Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect for a period of thirty (30) years, beginning as of the date of recordation of this Declaration, after which time the provisions of the Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating the provisions of the Declaration, signed by Owners of seventy-five percent (75%) of the Lots within Kahe Ranch Subdivision Lots has been recorded at least ninety (90) days prior to the end of such period; provided, however, that the provisions hereof shall in any event terminate no later than twenty-one (21) years following the death of George Bush, President of the United States of America, Frank Fasi, Mayor of the City and County of Honolulu, and all of their descendants living on the date of execution hereof.

11.3 Amendment. Any provision contained in this Declaration may be amended or changed, and additional provisions

other remedies herein provided, each provision to this Declaration with respect to an Owner or the Lot of an Owner shall be enforceable by the Homeowners' Association, by Declarant, 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 attorneys' fees.

11.6 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, defeat, 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 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 affect, defeat, render invalid or impair the title or interest of 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 result in any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien, 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 shall be paid by such holder. Any such purchaser on foreclosure shall, however, be subject to all provisions of this Declaration.

11.7 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts of development of the Kaohi Ranch Subdivision Lots 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 Kaohi Ranch Subdivision Lots.

11.8 Assignment of Powers. Any and all of the rights and powers vested in Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Homeowners' Association and the Homeowners' Association shall accept the same effective upon the recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

notice of the meeting had been given to him. The presence of any Owner at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

Notices, information and material required to be given hereunder to Declarant shall be addressed to the Declarant at _____ . Notices, information and material required to be given hereunder to the Association or its Board shall be addressed to such entity in care of the Association at the office of the Association.

11.17 Word Usage. The use of the masculine gender herein shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the text so requires.

11.18 Release of Dedicated Lots. Declarant shall have the right and power, without having to obtain the consent or approval of the Homeowners' Association, any Lot Owner, any mortgagee of any Lot, or any other person, to grant, dedicate and/or convey any roadway and/or utility lot, or any other Lot owned by Declarant to the County of Hawaii, State of Hawaii, any other appropriate governmental agency, and/or to any public or private utility. Notwithstanding any other provision of this Declaration to the contrary, any such roadway or utility lot or other Lot so granted, dedicated and/or conveyed upon such grant, dedication or conveyance, automatically and without further action, shall be released from, shall be free and clear of, and shall no longer be subject to, any of the terms, covenants, conditions or restrictions contained in this Declaration. Declarant may (but need not necessarily) amend this Declaration to provide for such release, without the consent, joinder, vote or approval of any other Owners of Lots, the Homeowners' Association or any other person.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above written.

By 
GENE L. HENRY

That certain real property situated on the Easterly side of Mamalahoa Highway at Kaoha 4th, South Kona, Island and County of Hawaii, State of Hawaii.

Being a portion of Mahele Award 25, Royal Patent 7739 to Nahua.

Beginning at a 1/2 inch pipe (found) at the Southwesterly corner of this parcel of land, being also the Northwesterly corner of the Easterly portion of Grant 2368 to Onua, and on the Easterly side of Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKAKUU 4" being 1,811.62 feet North and 361.87 feet East and running by azimuths measured clockwise from true South:

1. 165° 02' 30" 72.89 feet along the Easterly side of Mamalahoa Highway to a 1/2 inch pipe (set);
- Thence, following along the Easterly side of Mamalahoa Highway on a curve to the right with a radius of 262.94 feet, the chord azimuth and distance being:
2. 180° 23' 30" 139.21 feet to a 1/2 inch pipe (set);
 3. 195° 44' 30" 513.57 feet along the Easterly side of Mamalahoa Highway to a 1/2 inch pipe (set);
 4. 194° 00' 224.60 feet along the Easterly side of Mamalahoa Highway to a 1/2 inch pipe (set);
 5. 281° 02' 241.70 feet along Grant 1973 to K. Pahua to a 3/4 inch pipe (found);
 6. 282° 46' 30" 669.90 feet along Grant 1973 to K. Pahua to a 3/4 inch pipe (found);
 7. 285° 44' 40" 1,339.30 feet along Grant 1973 to K. Pahua and along Royal Patent 4931, Land Commission Award 9891, Apana 2 to Kaloua to a 1/2 inch pipe (set);
 8. 277° 45' 145.20 feet along Royal Patent 4931, Land Commission Award 9891, Apana 2 to Kaloua to a 1/2 inch pipe (set);
 9. 273° 30' 215.80 feet along Royal Patent 4931, Land Commission Award 9891, Apana 2 to Kaloua to a 1/2 inch pipe (set);

EXHIBIT "A"

BEING the same land acquired by GENE L. HENRY by Judgment and Decree filed in the Circuit Court of the Third Circuit, State of Hawaii, on February 11, 1982, in Civil No. 6155, and also recorded in the Bureau of Conveyances of the State of Hawaii in Book 16165, Page 12.

EXHIBIT "A"
Page 3

EASEMENT "A-1"
(50-FT. WIDE)
FOR ACCESS AND UTILITY PURPOSES
OVER AND ACROSS LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12

Land situated along the Southerly boundaries of Lots 3, 4, 5, 6, 7, 8, 9 and 10 of this subdivision and being also on the Easterly side of Mamalahoa Highway at Kaohe 4th and 5th, South Kona, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12;
Mahele Award 25, Royal Patent 7739 to Nahua; and
Grant 2368 to Ohua.

Beginning at the Northwesterly corner of this easement, being also a point $194^{\circ} 00' 45.00$ feet from the Southwesterly corner of Lot 3 and being a point on the Easterly side of Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKAKUU 4" being 2,592.79 feet North and 502.60 feet East and running by azimuths measured clockwise from True South:

Thence, following along the remainders of Lot 3 and Mahele Award 25, Royal Patent 7739 to Nahua on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

1. $329^{\circ} 00'$ 28.28 feet to a point;

Page 1 of 4

WES THOMAS & ASSOCIATES, INC.

LAND SURVEYORS

75-5722 Kalawa Street, Kailua-Kona, Hawaii 96740

EXHIBIT C

Thence, following along the remainders of Lot 10 and Mahele Award 25, Royal Patent 7739 to Nahua on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:

11. 310° 31' 51" 53.08 feet to a point;

Thence, following along the remainders of Lot 11 and Mahele Award 25, Royal Patent 7739 to Nahua on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:

12. 31° 40' 10" 63.64 feet to a point;

Thence, following along the remainders of Lot 12 and Mahele Award 25, Royal Patent 7739 to Nahua on a curve to the right with a radius of 45.00 feet, the chord azimuth and distance being:

13. 94° 16' 10" 27.21 feet to a point;

Thence, following along the remainders of Lot 12 and Mahele Award 25, Royal Patent 7739 to Nahua on a curve to the left with a radius of 40.00 feet, the chord azimuth and distance being:

14. 91° 48' 35" 27.44 feet to a point;

15. 71° 45' 420.03 feet along the remainders of Lot 12, Mahele Award 25, Royal Patent 7739 to Nahua, along Lot 13 and along the remainder of Grant 2368 to Ohua to a point;

Thence, following along Lot 13 and along the remainder of Grant 2368 to Ohua on a curve to the right with a radius of 400.00 feet, the chord azimuth and distance being;

16. 85° 52' 30" 195.23 feet to a point;

17. 100° 00' 529.94 feet along Lot 13 and along the remainder of Grant 2368 to Ohua to a point;

Thence, following along Lot 13 and along the remainder of Grant 2368 to Ohua on a curve to the right with a radius of 400.00 feet, the chord azimuth and distance being:

18. 127° 52' 30" 374.04 feet to a point;

19. 155° 45' 712.63 feet along Lot 13, along the remainder of Grant 2368 to Ohua and along the

WES THOMAS & ASSOCIATES, INC.

LAND SURVEYORS

73-5722 Kalawa Street, Kailua-Kona, Hawaii 96740

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR KAOHE RANCH SUBDIVISION**

That certain Declaration of Protective Covenants, Conditions and Restrictions for Kaohe Ranch Subdivision (hereinafter "CC & R's"), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-173651 and pertaining to that certain real property situated on the easterly side of Mamalahoa Highway, at Kaohe 4th, South Kona, Island, County and State of Hawaii, bearing Tax Map Key: (3) 8-7-8-8 is hereby amended, revised and superseded by the following provisions. In the event of any conflict between the meaning, terms and conditions of said CC & R's and the terms, provisions and conditions of this Amendment, this Amendment shall control.

Paragraph 2.4 entitled "Voting Rights" is hereby deleted and the following is inserted in place thereof:

Voting by proxy or by ballot shall be permitted. The right of each voter to vote may not be severed or separated from any lot, and any sale, transfer or conveyance of the estate of an owner in his lot shall operate to transfer the appurtenant voting rights without the requirement or any express reference thereto. Each owner, including Declarant, shall have one vote for each Homeowners Association lot which he owns. In the event of multiple owners of the same lot, the multiple owners shall, prior to each meeting of the Homeowners' Association, provide the Board with a written statement signed by each such multiple owner, designating one person who shall have the right to cast the vote assigned to the lot owned by such multiple owners. In the absence of such a written statement, if only one owner of multiple owners casts a vote with respect to such lot, that vote will be counted. However, if there are multiple conflicting votes cast with respect to any given lot no vote with respect to such lot shall be counted.

Paragraph 2.5 entitled "Quorums" is hereby deleted and the following is inserted in place thereof:

The presence of a majority of the total voting power of the Homeowners' Association, in person, by proxy or by ballot at any meeting to consider a matter shall constitute a quorum for consideration of that matter. Except as a

Paragraph 5.1(b) entitled "Assessments" is hereby deleted and the following is inserted in place thereof:

Road maintenance assessments, payable to the Declarant (or to the Kaohe Ranch Road Maintenance Corporation at such time as the obligation for road maintenance is assigned to the Kaohe Ranch Road Maintenance Corporation), by all owners of Homeowners' Association lots and all other members of the Kaohe Ranch Road Maintenance Corporation in connection with the maintenance and repair of the road system, as set forth herein;

Paragraph 5.1(c) entitled "Assessments" is hereby deleted and the following is inserted in place thereof:

Homeowners' Association assessments, payable to the Declarant (or to the Homeowners' Association at such time that the Homeowners' Association is activated pursuant to Paragraph 2.1 of the CC & R's) by all owners of Homeowners' Association lots in connection with the administration and operation of the Homeowners' Association.

Paragraph 5.1(d) is hereby deleted and the following is inserted in place thereof:

In addition to the regular monthly assessments, the Declarant, Homeowners' Association or the Kaohe Ranch Road Maintenance Corporation may levy a special assessment for road repair purposes only provided that no special assessment may be levied unless the entity seeking to do so provides each owner or other user of the roadway affected thereby with a detailed description of the repair work sought to be done and an estimate of the costs to be incurred thereby and unless the owners and all such other users of the roadway system affected thereby vote to approve such special assessments pursuant to Article 2 of the CC & R's, at a special meeting called for that purpose.

All other terms and provisions of said CC & R's not specifically modified herein shall remain unchanged and in full force and effect.

The parties agree that this Amendment may be signed and acknowledged in counterparts, each of which shall be considered an original, and the counterparts shall together constitute one and the same agreement, binding all of the parties to the Amendment, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Amendment, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The undersigned KAOHE RANCH ESTATES, INC., a Washington corporation, having acquired all of the rights, obligations and duties of the Declarant under said CC & R's does hereby consent to the foregoing Amendment to CC & R's as required pursuant to Paragraph 11.3 of the CC & R's; and

The President and Secretary of the undersigned KAOHE RANCH SUBDIVISION HOMEOWNERS' ASSOCIATION, an unincorporated association of property owners (the "Association"), do hereby certify pursuant to Paragraph 11.3 of the CC & R's that the foregoing Amendment to CC & R's has been approved by the affirmative vote of not less than seventy-five percent (75%) of the total voting power of the Association at a meeting of the Association duly called and held on March 31, 1994, for the purpose of authorizing such amendment, and notice of which meeting disclosed that such amendment would be considered.

IN WITNESS WHEREOF, the undersigned have placed their hands on this 14th day of April, 1994.

KAOHE RANCH ESTATES, INC., a
Washington corporation

By _____
GENE L. HENRY, Its President

By Thomas L. Allen
THOMAS L. ALLEN, Its Secretary

KAOHE RANCH SUBDIVISION HOMEOWNERS'
ASSOCIATION, an unincorporated
association of property owners

By _____
GENE L. HENRY, Its President

By Thomas L. Allen
THOMAS L. ALLEN, Its Secretary

STATE OF WASHINGTON

COUNTY OF King

}
} SS:

On this 14th day of April, 1994,
before me personally appeared GENE L. HENRY, to me personally
known, who, being by me duly sworn, did say that he is the
President of KACHE RANCH SUBDIVISION HOMEOWNERS' ASSOCIATION, an
unincorporated association of property owners, and that said
instrument was signed on behalf of said Association by authority of
its Board of Directors, and said officer acknowledged that he
executed said instrument as the free act and deed of the Board of
Directors of the Association.

Dean W. Heimback

Notary Public of and for said
State and County

My commission expires: 9-1-95

RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY
in this Document when received.

STATE OF WASHINGTON

COUNTY OF Skagit

)
) SS:
)

On this 14th day of April, 1994,
before me personally appeared THOMAS L. ALLEN, to me personally
known, who, being by me duly sworn, did say that he is the
Secretary of KACHE RANCH SUBDIVISION HOMEOWNERS' ASSOCIATION, an
unincorporated association of property owners, and that said
instrument was signed on behalf of said Association by authority of
its Board of Directors, and said officer acknowledged that he
executed said instrument as the free act and deed of the Board of
Directors of the Association.

Charles A. Colquhoun

Notary Public of and for said
State and County

My commission expires: 2-17-97

2 ✓
R-155

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

APR 12, 1996 / 08:01 AM

Doc No(s) 96-049903

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICKUP
WALLACE H. GALLUP, JR.
Frame 10 Business Center, Ste. 3007
75-5585 Ololi Road
Kailua-Kona, Hawaii 96740

TGA - 218981

AFFECTS TAX MAP KEY: (3) 8-7-8-3

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR KAOHE RANCH SUBDIVISION**

That certain Declaration of Protective Covenants, Conditions and Restrictions for Kaohe Ranch Subdivision recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 90-173651, hereinafter referred to as the "Declaration" amended by instrument dated April 14, 1994 recorded in said Bureau as Document Number 94-069320 pertaining to certain real property situate at Kaohe 4th, South Kona, Island, County and State of Hawaii, is hereby further amended as follows:

Paragraph 1.6 entitled "Kaohe Ranch Subdivision Lots " and Paragraph 1.7 entitled "Lot" are both amended by adding an additional sentence at the end of each of said paragraphs which sentence will provide as follows:

"It is further expressly provided that Lot 2, now part of Lot 13-A-1 as more particularly described in that certain Deed dated January 28, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 95-053254, is not

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subject to this Declaration of Protective Covenants, Conditions and Restrictions except to the extent set forth in that certain Grant of Easement dated December 20, 1994 recorded in said Bureau as Document Number 95-047505.”

Paragraph 4.5 entitled “Improvement of Road System by Homeowners’ Association” is amended by replacing the reference to “Lot 1” with reference to “Lot 1 and Lot 2, now part of Lot 13-A-1 as more particularly described in that certain Deed dated January 28, 1994, recorded in said Bureau as Document Number 95-053254”.

Paragraph 4.6 entitled “Assessment for Improvement of Road System by Homeowners’ Association” is amended by adding a new sentence at the end thereof which sentence shall provide as follows:

“Lot 2 now a part of Lot 13-A-1 as more particularly described in that certain Deed dated January 28, 1994 recorded in said Bureau as Document Number 95-053254 shall not be included in any assessments for maintenance and/or improvements of the road system by the Homeowners’ Association or otherwise except to the extent set forth for in that certain Grant of Easement dated December 20, 1994, recorded in said Bureau as Document Number 95-047505.”

All other terms and provisions of said Declaration as previously amended, not specifically modified herein shall remain unchanged and in full force and effect.

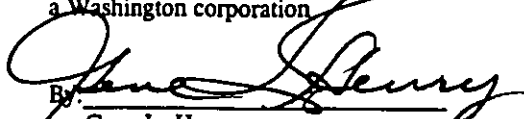
The undersigned Kaohe Ranch Estates, Inc., a Washington corporation, having acquired all of the rights, obligations and duties of the Declarant under said Declaration does hereby consent to the foregoing amendments to the Declaration as required pursuant to paragraph 11.3 of the Declaration.

The President and Secretary of the undersigned Kaohe Ranch Subdivision Homeowners’ Association, a Hawaii non-profit corporation, hereinafter referred to as the “Association”, do hereby certify pursuant to paragraph 11.3 of the Declaration that the foregoing amendments to the Declaration have been approved by the affirmative vote of not less than 75% of the total voting power of the Association at a meeting of the Association duly called and held on February 27, 1996 for the purpose

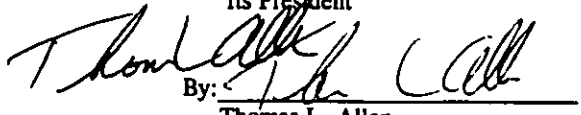
of authorizing such amendments, and notice of which meeting disclosed that such amendments would be considered.

IN WITNESS WHEREOF, the undersigned have placed their hands on this 20th day of March, 1996.

KAOHE RANCH ESTATES, INC.,
a Washington corporation

By: 

Gene L. Henry,
Its President

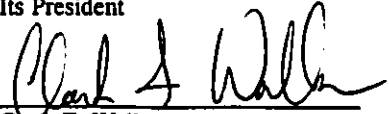
By: 

Thomas L. Allen,
Its Secretary

KAOHE RANCH HOMEOWNERS'
ASSOCIATION, a Hawaii non-profit
corporation

By: 


Thomas L. Allen,
Its President

By: 

Clark F. Walker
Its Secretary

STATE OF WASHINGTON)
COUNTY OF King) SS.

On March 20th, 1996, before me personally appeared GENE L. HENRY, to me personally known, who, being by me duly sworn or affirmed, did say that such person is the President of KAOHE RANCH ESTATES, INC., a Washington corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officers acknowledged said instrument to be the free act and deed of said corporation.

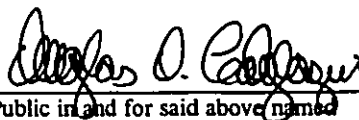


Notary Public in and for said above named
State and County

My commission expires: June 5th 1996

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

On March 19, 1996, before me personally appeared THOMAS L. ALLEN, to me personally known, who, being by me duly sworn or affirmed, did say that such person is the President of KAOHE RANCH HOMEOWNERS' ASSOCIATION, a Hawaii non-profit corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officers acknowledged said instrument to be the free act and deed of said corporation.



Notary Public in and for said above named
State and County

My commission expires: 2-17-97

STATE OF Hawaii)
) SS.
COUNTY OF Hawaii)

On April 1st, 1996, before me personally appeared CLARK F. WALKER, to me personally known, who, being by me duly sworn or affirmed, did say that such person is the Secretary of KAOHE RANCH HOMEOWNERS' ASSOCIATION, a Hawaii non-profit corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officers acknowledged said instrument to be the free act and deed of said corporation.

Wendy A. Ellis L.S.
Notary Public in and for said above named
State and County

My commission expires: Nov 8, 1998