



Title Guaranty of Hawaii, Inc.

235 QUEEN STREET • P.O. BOX 3084 • HONOLULU, HAWAII 96802

PROJECTS DEPARTMENT Phone (808) 533-6261 Fax (808) 533-5854

COUNTY OF HAWAII
OFFICE OF HOUSING & COMMUNITY DVLP
74-5044 ANEKEOHOKALO LE HWY, BLDG B
KAILUA-KONA, HI 96740
ATTN: ANNE BAILEY

2013 MAR 12 PM 12: 04
COUNTY OF HAWAII
OHCD-KONA OFFICE

Reference Number: KAMAKOA NUI (DCLN OF REST COV)
Accommodation Number: 447237


We received your request to record the DECLARATION OF RESTRICTIVE COV. on 03/ 6/2013 with check(s) in the amount of \$.00 recording fee.

You requested that we record the Documents in the Bureau of Conveyances and/or the Office of the Assistant Registrar. We complied with your request strictly as an accommodation to you. We did not review the Documents or in any way examine the effect on any real property. Neither were we requested to issue any title insurance.

The following action was taken on 03 / 08 / 2013 .

- Documents were recorded, certified copies are attached.
- Documents are not acceptable for recordation. The Documents and checks are enclosed. Please see attached explanation.

Thank you for this opportunity to be of service. If you have any questions, or if we can be of further service, please contact us at (808) 533-6261.



Lynne Shimizu

* Please find enclosed check no. 9374.

~~RELEASE INSTRUMENT:~~

INSTR: DECLARATION OF RESTRICTIVE COV.

LSS

LASERFICHE
11. 12 12

This is a copy of Bureau of Conveyances

Doc A-48150173

and / or

March 8, 2013 8:01 AM

affecting Certificate of Title No.

recorded on MAR 08 2013 at 8:01 o'clock a.m.

TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: MAIL (X) PICKUP () TO:

County of Hawaii
74-5044 Anekeohokalole Hwy.
West Hawaii Civic Center, Bldg. B, 2nd Fl.
Kailua-Kona, Hawaii 96740

TG ACCOM: 447237P

This document contains 40 pages

TITLE OF DOCUMENT: DECLARATION OF RESTRICTIVE COVENANTS FOR KAMAKOA NUI

DECLARATION OF RESTRICTIVE COVENANTS
FOR KAMAKOEA NUI

THIS DECLARATION OF RESTRICTIVE COVENANTS (hereinafter "Declaration") is made as of January 28, 2013, by THE COUNTY OF HAWAII, a municipal corporation (hereinafter "County"), the address of which is 25 Apuni Street, Hilo, Hawaii 96720.

ARTICLE I

Statement of Purpose and Imposition of Covenants

Section 1.1. Property. The County is the owner of that certain real property situated at Waikoloa, Island and County of Hawai'i, State of Hawai'i, described in *Exhibit A* attached hereto. The County desires to develop the Property (as defined below) and intends by this Declaration to protect and enhance the quality, value, desirability and attractiveness of the Property and to define certain duties, rights, and powers of the Declarant (as defined below) and the owners of Lots (as defined below) within the Property.

Section 1.2. Declaration to Run with the Property. Declarant, its successors and assigns, hereby declares that the Property shall be owned, held, transferred, conveyed, sold, encumbered, used, occupied, maintained, altered and improved subject to the terms and conditions of this Declaration and the Design Guidelines (as defined below), as amended or modified from time to time. All of this Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of the County, the Declarant (as defined below), and all Owners and Occupants (as defined below), and their respective successors in interest. Further, the covenants, conditions, restrictions and easements herein contained and encumbering the Property shall benefit specifically, as a dominant tenement, all adjacent or nearby property owned by the County or its successors or assigns. This Declaration and any supplemental declarations affecting the Property or Annexation Property (as defined below) and any other amendments hereto shall be properly recorded with the Assistant Registrar of the Land Court of the State of Hawai'i (hereinafter Land Court) or the Bureau of Conveyances (hereinafter Bureau). In the previous sentence and whenever otherwise used herein, the terms "record," "recorded," "recording," "recordation" shall mean the act of recording or filing an instrument, having recorded or filed an instrument, being an instrument of record, or being set forth in an instrument of record, as the context requires, in or with the Land Court, the Bureau, or the Department of Commerce and Consumer Affairs of the State of Hawai'i, as applicable.

Section 1.3 Term. Unless sooner terminated as provided in Article XIV hereof, the restrictions and other provisions set forth in this Declaration shall remain in force

until December 31, 2032, and shall be automatically renewed for successive periods of ten (10) years unless during the year 2032 or the last year of any ten-year extension, there is recorded with the Bureau an instrument signed and acknowledged by the owners of not less than sixty-seven percent (67%) of the Lots in the Property stating that the extension is not desired.

ARTICLE II **Definitions**

Defined terms appear throughout this Declaration with the initial letter of each such term capitalized. Unless the context clearly requires otherwise, the following terms used in this Declaration (in addition to those terms that may be defined internally) are defined as follows:

Section 2.1. **“Annexation Property”** has the meaning set forth therefor in Article VII.

Section 2.2. **“Community”** means Kamakoa Nui created by and subject to this Declaration consisting of the Property and all of the Improvements (as defined below) now or hereafter located thereon as described in this Declaration, as it may be supplemented or amended from time to time. This Community may be developed in multiple phases and may include the Annexation Property described in Article VII.

Section 2.3. **“Community Uses”** has the meaning set forth therefor in Section 9.5.

Section 2.4. **“County Control Period”** has the meaning set forth therefor in Section 6.1.

Section 2.5. **“Declarant”** means, during the County Control Period, the County of Hawai'i and its successors or assigns. Following expiration or termination of the County Control Period, “Declarant” shall mean the Owners collectively, and the rights of “Declarant” hereunder shall be exercisable by a written instrument signed and acknowledged by the owners of not less than sixty-seven percent (67%) of the Lots in the Property. A person or entity shall be deemed a successor and assign of the County only if specifically so designated in a duly recorded written instrument as a successor or assign of the County under this Declaration, as it may be properly amended from time to time and shall be deemed a successor and assign of the County only as to the particular rights or interests of the County under this Declaration or under such amendment which are specifically designated in the recorded written instrument.

Section 2.6. **“Declaration”** means this instrument, as it may be from time to time supplemented or amended in accordance with this Declaration.

Section 2.7. **“Design Guidelines”** has the meaning set forth therefor in Section 5.2.

Section 2.8. "**DRC**" means the Design Review Committee, as further defined in Section 5.1.

Section 2.9. "**Dwelling Unit**" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy by a Single Family.

Section 2.10. "**Environmental Laws**" has the meaning set forth therefor in Section 3.1.

Section 2.11. "**Hazardous Materials**" has the meaning set forth therefor in Section 3.1.

Section 2.12. "**Improvement**" means any building, structure, parking area, fence, wall, hedge, planting, pole, antenna, driveway, deck, sign, change in any exterior color or shape, excavation and any other site work including without limitation grading, road construction, utility improvements, removal of trees or plantings and so forth, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior improvements. "Improvement" does include both original improvements and all later changes and improvements.

Section 2.13. "**Lot**" means any area of the Property which is designated as a lot on any subdivision map or file plan recorded by or with the consent of Declarant, and classified or intended for residential use. Upon a permitted consolidation of two or more Lots, the term "Lot" shall mean the parcel consisting of the Lots so consolidated.

Section 2.14. "**Mortgage**" means any recorded or otherwise perfected instrument, which is not a fraudulent conveyance under Hawai'i law, given in good faith and for valuable consideration as security for the performance of an obligation, including without limitation a deed of trust or agreement of sale, but shall not include any instrument creating or evidencing solely a security interest arising under the Hawai'i Uniform Commercial Code (Hawai'i Revised Statutes Chapter 490, as amended). "**First Mortgage**" means a Mortgage which is the first and most senior of all Mortgages upon the same Property. "**Mortgagee**" means the holder of a note or interest secured by a Mortgage. "**First Mortgagee**" means the holder of a note or interest secured by a First Mortgage. "**Mortgagor**" means the party executing a Mortgage as obligor.

Section 2.15. "**Owner**" or "**Owner Occupant**" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot or Dwelling Unit, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is sold under a recorded agreement of sale, for a term of thirty (30) or more years under a recorded lease (if and when permitted under the terms of the Owner's deed), the purchaser or lessee (rather than the fee owner) will be considered the Owner. For purposes of limitations and restrictions set forth in Article III, IV, and V, the term "Owner" shall not include Declarant with respect to a Lot owned by Declarant.

Section 2.16. "**Planting Strip**" shall mean any area between a sidewalk and the back of the curb of a Roadway, whether such area is in the County right-of-way or within the boundaries of a Lot.

Section 2.17. "**Person**" means a natural person, a corporation, a partnership, a limited liability company, a trustee or other entity capable of holding title to real property, and such holder's respective heirs, personal representatives, successors and assigns.

Section 2.18. "**Property**" means the real property described in *Exhibit A* attached hereto and any additional real property shown in *Exhibit B* attached hereto made subject to this Declaration by annexation pursuant to Article VII but only after completion of such annexation, together with all improvements now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

Section 2.19. "**Road**" or "**Roadway**" means any paved vehicular right-of-way constructed within or upon any portion of the Property (other than Lot) for the purpose of providing access to Lots, whether owned by the County or one or more Owners.

Section 2.20. "**Single Family**" means (i) a group of one or more persons each related to the other by blood, marriage or legal adoption; and/or (ii) a group of no more than five unrelated adult natural Persons who maintain a common household in a Dwelling Unit.

Section 2.21. "**Surrounding Use Effects**" has the meaning set forth therefor in Section 9.5.

ARTICLE III **Restrictions on Use and Conduct**

The Property shall be used in accordance with the covenants, conditions, restrictions and easements set forth in this Declaration and the DRC Rules and Guidelines, as they may be amended from time to time.

Section 3.1. **Hazardous Materials.** Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (hereinafter Environmental Laws). The Environmental Laws include, but are not limited to, those laws regulating the use, generation, storage of disposal of hazardous substances, wastes and materials, including, without limitation, any and all radioactive materials, asbestos, polychlorinated biphenyl ("PCB's") chemicals which cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and other hazardous substances or materials listed, described or defined in 40 CFR Para. 302, as amended from time to time (hereinafter collectively Hazardous Materials). No Owner shall knowingly use,

generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about any Lot or any portion of the Property, or transport to or from any portion of the Property any Hazardous Materials except in compliance with the Environmental Laws.

Section 3.2. Property Restrictions. No covenants, conditions, restrictions or easements, or similar instruments shall be recorded by any Owner or other Person, except Declarant, against any Lot without the provisions thereof having been first approved in writing by the DRC and, if during the County Control Period, the Declarant, which approval may be withheld in the sole discretion of the DRC and the Declarant (if applicable), and any such covenants, conditions, restrictions or easements recorded without the DRC's and the Declarant's (if applicable) approval being evidenced thereon shall be null and void.

Section 3.3. Rezoning. No applications for general plan changes, rezoning, variances, special permits, use permits or the like affecting any Lot shall be filed with any governmental authority unless the proposed use of the Lot has first been approved by the DRC and Declarant and the proposed use otherwise complies with this Declaration, as it may be amended from time to time. This provision shall not in any way prohibit, restrict or otherwise limit the right of Declarant to apply for, prosecute and receive rezoning and/or reclassification of any portion of the Property or the Annexation Property then owned (or the subject of an option to purchase) by Declarant, or to apply for, prosecute and receive variances or use permits relating to such Property.

Section 3.4. Covenants and Restrictions. The following covenants and restrictions shall apply to all Lots, the Owners thereof, and all Occupants within the residential area:

(a) **Single Family Use.** Each Lot or Dwelling Unit in the Community shall be used only for the construction and occupancy of a Single Family Dwelling Unit and typical residential activities, incidental thereto. All such Lots shall be used, improved, and devoted exclusively to Single Family residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Lot except qualified home businesses as permitted by applicable State of Hawai'i and/or County laws and regulations. No Lot shall be occupied by more than one Single Family.

(b) **Garages.** No garage shall be used for other than the parking of trailers, transportation vehicles or recreational vehicles, provided, however, that a garage may be used for laundry, storage purposes or minor repairs not otherwise prohibited, so long as such use is not visible from any Road. No garage shall be used for living, cooking or sleeping purposes.

(c) **Violation of Law.** No Owner shall permit anything to be done or kept in or upon such Owner's Lot which would be in violation of any law.

(d) **Signs.** No sign of any kind shall be displayed to the public view or from any Lot without the approval of the DRC, except: (i) a single sign, no larger than 2 feet by 3 feet, as may be used by any Owner in connection with the sale or leasing of the Lot; (ii) such signs as may be used by Declarant in connection with the development and sale or leasing of Lots or other property in the Property and the Community in general; (iii) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (iv) as may be approved by Declarant or the DRC, such signs as may be required for traffic control and regulation of Roadways.

(e) **Animals.** No animals, including without limitation swine, goats, horses or other domestic farm animals or poultry of any kind, may be kept, bred or maintained in or on any Lot or in or upon any open area within or adjacent to the Community, except a reasonable number of commonly accepted household pets. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot without a leash, or conduct itself so as to create an unreasonable annoyance.

(f) **Nuisances; Construction Activities.** No Owner shall permit or suffer anything to be done or kept about or within such Owner's Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance or commit or suffer an illegal act to be committed within such Owner's Lot or on or about the Property. Each Owner shall comply with the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. However, Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the DRC. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the DRC, which also may require screening of such storage areas.

(g) **Boats and Motor Vehicles.** (i) No boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored upon a Lot except within an enclosed garage or in a side or back yard if fully screened from view from adjacent Lots and Roadways or as otherwise permitted by the DRC Rules and Guidelines or subsection (iii) below; (ii) no vehicle shall be repaired, serviced or rebuilt on any Lot (except within an enclosed garage) or upon the Roads; and (iii) nothing shall be parked on the Roads except in such parking areas as may be designated by the County. The provisions of this Section shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to or within the Property.

(h) **Lights.** No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be

directed or reflected on any other Lot, except as may be expressly permitted by the applicable DRC Rules and Guidelines.

(i) **Antennas.** No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon Lot except as may be permitted in accordance with the DRC Rules and Guidelines. Declarant may erect an aerial or other apparatus for a master antenna or cable system, should any such master system or systems be utilized by Declarant and require any such exterior apparatus.

(j) **Garbage.** No garbage or trash shall be kept, maintained or contained in any Lot so as to create a strong offensive odor or be visible from another Lot or the Roads except temporarily for pickup. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot, provided that non-commercial, non-odoriferous, contained and reasonably concealed composting and mulching shall be permitted.

(k) **Mining.** No Lot shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind. Nothing herein shall prohibit or restrict Declarant or any other Owner or operator of a water system serving the Property with Declarant's approval from exploring and drilling for, pumping and removing water from the Property, or the installation and operation of water wells by Declarant.

(l) **Safe Condition.** Without limiting any other provision in this Section 3.4, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots.

(m) **Fires.** Other than barbecues in properly constructed and maintained barbecue pits or grills and fires in fire pits constructed in compliance with the DRC Rules and Guidelines, no open fires shall be permitted on Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for other Owners.

(n) **Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other Improvement or other obstruction which would interrupt the existing drainage of the land. For the purpose hereof, "existing drainage" is defined as the drainage which exists at the time the Lot is conveyed to an Owner by Declarant, or later grading changes which are shown on plans approved by the DRC Rules and Guidelines as provided in Section 5.4. The "existing drainage" may include drainage from other property across any Lot. Each Owner shall maintain the drainage system, if any, constructed or otherwise in place with the Dwelling Unit upon its conveyance to an Owner by Declaration. Each Owner shall be solely responsible for all surface water escaping the Owner's Lot and any and all damages resulting therefrom. This Section

shall not be deemed to restrict or otherwise affect rights reserved to Declarant to alter or change drainage patterns within or upon the Property.

(o) **Temporary Occupancy and Temporary Buildings.** No trailer, room of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of Improvements on any property shall be removed immediately after the completion of construction.

(p) **Maintenance of Lawns and Plantings.** Each Owner of a Lot shall keep all appropriate areas of the Lot (including setback areas and slope areas on the Lot) and adjacent Planting Strips landscaped and shall keep all shrubs, trees, hedges, grass and plantings of every kind located on such Owner's Lot (including setback areas and slope areas) and adjacent Planting Strips neatly trimmed, shall keep all such areas properly cultivated and free of trash, weeds, and other unsightly material and shall maintain all paved and concrete areas, including driveways and parking areas, in good condition and repair. No plants appearing on the list of Hawai'i's Most Invasive Horticultural Plants maintained by the Hawai'i State Department of Land and Natural Resources (which list can, as of the date of this Declaration, be found at www.state.hi.us/dlnr/dofaw/hortweeds/specieslist.htm) may be planted within the Community.

(q) **Diseases and Insects.** No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects, rodents or other pests. All earth and fill material under concrete slabs shall be chemically treated for subterranean termites by a reliable, established and licensed termite control company. Treatment shall be guaranteed in writing against subterranean infestation for at least three (3) years, and a certified copy of this guaranty shall be filed with the DRC. Further, Owner shall regularly cause Owner's Dwelling Unit to be treated against the risk of termite infestation by a licensed termite contract company. Any failure to regularly maintain and treat a Dwelling Unit shall be at Owner's sole risk and shall void the warranty.

(r) **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except; (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a Dwelling Unit, appurtenant structures, or other Improvements; or (ii) that which Declarant may require for the development, operation and maintenance of the Property.

(s) **Offensive Activity.** No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive

activity shall be conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.

(t) **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot.

(u) **Timeshare and Transient Rentals Prohibited.** No timeshare, interval ownership, transient vacation rentals or other similar use or ownership shall be permitted within any Lot. Bed and breakfast type commercial operations are specifically prohibited.

(v) **Clotheslines, Tanks, Etc.** All clotheslines, dumpsters, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of any other Lot or adjacent Roadway.

(w) **Guns and Projectiles.** The discharge of firearms and use of projectiles, including blanks, and other projectiles within the Property is prohibited except by police officers and security personnel while acting in their official capacities. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "projectiles" includes but is not limited to, sling shots and bows and arrows, regardless of size.

(x) **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on any Lot except within an enclosed Dwelling Unit. Exterior sculptures, fountains, flags, and similar items must be approved in writing and in advance by the DRC.

(y) **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure and is approved in writing and in advance by the DRC.

(z) **Excavation.** No excavation shall be made except in connection with improvements approved as provided in this Declaration. "Excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a disturbance of earth, rock, or other substance by removal or fill of more than 23 inches below or above, respectively, the natural surface of the land.

(aa) **Continuity of Construction.** All improvements commenced on any Lot shall be prosecuted diligently to completion, pursuant to the applicable DRC Rules and Guidelines.

(bb) **Subdivision and Consolidation.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner. This provision shall not in any way prohibit, restrict or otherwise limit Declarant from subdividing, condominiumizing, separating, consolidating or resubdividing Lots or any other property at and when it is owned by Declarant. Consolidated Lots shall constitute a single Lot for voting and assessment purposes if so designated in a Supplementary Declaration filed by Declarant, otherwise the Consolidated Lots shall retain their character as multiple Lots subject to multiple assessments but entitling the ultimate Owner thereof to multiple votes.

Section 3.6. **Amendment of Article.** This Article III may not be amended without the Declarant's written consent and joinder at any time prior to expiration of the County Control Period.

ARTICLE IV **Maintenance**

Section 4.1. **Owner's Responsibility; Generally (Landscaping and Improvements).** Except as otherwise specifically provided in this Declaration, the performance and cost of all maintenance and repair of each Lot and all structures, parking areas, landscaping and other Improvements located on or within such Lot shall be the sole responsibility of the Owner thereof. Owners of Lots adjacent to any Roadway shall maintain the driveway serving their respective Lots, whether or not the driveway lies entirely within the Lot boundaries. Each Owner shall maintain all Improvements, including landscaping upon or within such Owner's Lot and any adjacent Planting Strip, in a state of good condition and repair in accordance with this Declaration.

Section 4.2. **No Warranty.** Owner acknowledges that any warranty offered by the home builder will be provided in writing to the initial Owner of a Lot. Owner acknowledges and agrees that Declarant is not making or offering any warranties, express or implied, with respect to the Property, the Dwelling Unit, or the Community, including, without limitation, any warranties of merchantability, habitability, quality of construction, or fitness for a particular purpose. Declarant expressly disclaims any warranties, including without limitation, any express or implied warranties of merchantability, habitability, quality of construction, or fitness for a particular purpose with respect to the Property, the Dwelling Unit, or the Community.

Section 4.3. **Standard of Performance.** All Lots shall be maintained and repaired by the Owners under this Declaration in a manner consistent with the standard of maintenance and repair generally prevailing throughout the Property and all applicable covenants, and restrictions. Unless and to the extent otherwise specifically

provided in this Declaration, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. Notwithstanding anything to the contrary contained in this Declaration, each Owner shall have and shall comply with each of those obligations specified in the attached form of Declarant's limited warranty and undertake each of those actions therein required to be taken by the Owner.

Section 4.4. Trees. No trees planted by the Declarant in Planting Strips shall be removed, changed or relocated without the prior written consent of the Declarant or, after the County Control Period, the DRC. Each Owner shall be responsible for the proper maintenance and care of any trees planted on Owner's Lot and/or any Planting Strip adjacent to Owner's Lot. Owners may not remove, change, alter or relocate any trees so located. Trees that die may be replaced with a tree(s) of the same species and trunk circumference.

Section 4.5. Grade of Lot. Each Owner shall maintain the grade and ground cover of the Owner's Lot so as to prevent soil erosion, excessive water run-off onto any neighboring Lot or property, and the ponding of any water on the Lot. Such erosion and ponding may contribute to expansion or shrinking of soils underlying improvement and damage the area.

Section 4.6. Cleaning and Maintaining Sidewalks. The Owner of any Lot abutting or adjoining a public or private street shall maintain, and keep clean, passable and free from weeds and noxious growths, the sidewalk and gutter area, if any, which abuts or adjoins their property and any area between the sidewalk and fence line within the Lot.

ARTICLE V

Design Standards

The Design Review Committee ("DRC") shall have jurisdiction over all modifications, additions or alterations made to Improvements on the Property. The DRC shall have the authority and standing to enforce in courts of competent jurisdiction its decisions made pursuant to this Article V and any design guidelines that have been properly adopted. No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs, shall take place except in strict compliance with this Article V, the DRC Rules and Guidelines and any conditions of approval placed on such work by the DRC.

Section 5.1. Design Review Committee. The Declarant shall establish and promulgate initial design guidelines for Improvements within the Community (the "DRC Rules and Guidelines") and application and review procedures for the DRC. The Declarant shall initially and until expiration of the County Control Period, have the exclusive right to repeal or amend the DRC Rules and Guidelines, and to appoint, augment or replace any and all members of the DRC. There shall be no surrender of this right prior to the expiration of the County Control Period, except in a written instrument executed by the County or its successor or assign and recorded with the

Bureau. Following expiration of the County Control Period, new members of the DRC shall be appointed or elected in accordance with the procedures set forth in the DRC Rules and Guidelines. Following the County Control Period, the DRC may by a majority vote, from time to time and in its sole discretion, adopt, amend and repeal by a majority vote of the DRC, DRC Rules and Guidelines or interpret or implement the provisions of the applicable section of Article V pertaining to design standards, which must be approved by the DRC. A copy of the DRC Rules and Guidelines, as they may from time to time be adopted or amended, shall be available for the inspection and copying of any Owner or agent of the Owner.

Section 5.2. DRC Rules and Guidelines. The DRC Rules and Guidelines may include, among other things, the following restrictions, requirements and limitations:

- (a) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines;
- (b) Procedures for assuring conformity of completed Improvements to drawings and specifications approved by the DRC;
- (c) Procedures for the operations of the DRC;
- (d) A reasonable review and inspection in an amount not to exceed \$25.00; and
- (e) Other reasonable limitations and restrictions, including, without limitation, the regulation of landscaping, construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, which limitations or restrictions may be specific as to the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such Improvement.

The Design Guidelines shall pertain only to physical features (for example, structures and landscaping elements) within the Property and shall not include any restrictions on use, conduct or activities of Owners.

Section 5.3. General Provisions. The following general provisions are in addition to other rights of the Declarant and the DRC granted by this Declaration.

- (a) The DRC may delegate all or any portion of its review responsibilities to one or more of its members or architectural consultants retained by the DRC. The DRC may further avail themselves of technical and professional advice of consultants (architectural, design, landscaping, etc.) as it deems reasonable and appropriate, the cost of which shall be borne by the Owner seeking review of plans. Notwithstanding the foregoing, no Owner shall be responsible for payment of such consultants' fees unless, at least twenty (20) days prior to incurring any such fees, the DRC informs the Owner of the intent to retain such consultant(s) and provides the Owner with an estimate of the fees to be incurred. During such twenty (20) day period, the Owner shall have the option of withdrawing his or her request for approval of

drawings and specifications. The DRC may, in its sole discretion, require that the Owner pay the estimated fees in advance of the review with the difference between the estimated fees and the actual fees to be paid or refunded promptly upon request.

(b) The DRC shall approve, approve with conditions, or disapprove any drawings and specifications submitted in accordance with the DRC Rules and Guidelines within such period as may be specified in the DRC Rules and Guidelines.

(c) The DRC may enforce the DRC Rules and Guidelines and any disapproval or conditional approval of construction or other decision of the DRC against any Owner and the cost incurred in connection with any such enforcement, including reasonable attorney's fees and expert's fees, shall be reimbursed by the Owner to the DRC upon demand.

Section 5.4. Approval and Conformity of Drawings and Specifications. No building, fence, wall or other structure or Improvement of whatever type shall be constructed, erected or maintained upon the Property, nor shall there be any modifications, additions or alterations to any Improvement upon a Lot, or to the landscaping, grading or drainage thereof, nor shall there be any change to the exterior of any residence or other Improvements including, without limitation, the painting (other than painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in accordance with the DRC Rules and Guidelines and in compliance with the complete plans and specifications therefor that have been in advance submitted to and approved in writing by the DRC in accordance with the applicable DRC Rules and Guidelines as to design and harmony of external design and location in relation to surrounding structures, topography and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

Section 5.5. Non-Liability for Approval of Drawings and Specifications. Plans and specifications shall be reviewed by the DRC as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and, by approving such plans and specifications, neither the DRC, any member thereof, nor Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither the DRC, any member thereof, nor Declarant shall be liable to any Occupant, Owner, or other Person for any damage, loss or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (iii) the development, or manner of development, or any property within the Property, (iv) any change of the natural or existing grade of any Lot, or (v) the execution and filing of an estoppel certificate pursuant to the DRC Rules and Guidelines, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by the decision maker, was taken in good faith. Approval of plans and specifications by the DRC is not, and shall not be deemed to be, a representation or warranty that said

plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

Section 5.6. Inspection and Recording of Approval. Any member or authorized consultant of the DRC may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, except the interior of any completed Dwelling Unit, after reasonable notice as provided herein to the Owner, in order to inspect Improvements constructed or being constructed on such Lot, or any changes in the grade thereof, to ascertain that such Improvements or changes have been or are being built or changed in compliance with approved plans and specifications, the DRC Rules and Guidelines and this Declaration ("hereinafter Inspection"). The DRC may cause the Inspection to be undertaken within thirty (30) days of a request therefor from any Owner as to such Owner's Lot, and if such inspection reveals that the Improvements or changes located on such Lot have been completed in compliance with approved plans and specifications, this Article V and the DRC Rules and Guidelines, the DRC shall provide to such Owner a notice of such approval in recordable form which when recorded, shall be conclusive evidence of compliance, as of the date of the inspection, with the provisions of this Article V and the DRC Rules and Guidelines as to the Improvements or changes described in such recorded notice, but only as to such identified Improvements or changes.

Section 5.7. Construction on Lots.

(a) **Improvements.** Generally, any and all improvements made, installed or constructed on a Lot (other than by Declarant) shall comply with the DRC Rules and Guidelines adopted by the DRC and shall in all respects comply with all federal, state and local laws, rules and regulations, court orders, governmental directives and requirements, without limitation, all ordinances enforced by the County including the applicable zoning or building code ordinance of the County prior to the issuance of any building permit for such improvements.

(b) **Other Applicable Rules and Regulations.** Yard setbacks and the height of all Improvements on each Lot shall comply with any and all applicable zoning requirements, including, without limitation, any applicable requirements of the rules and regulations of the applicable zoning or planning agency of the County.

(c) **Limitation of Modification of Drainage Swale Area.** No drainage swale area may be modified in any manner that increases the risk of flooding on adjacent property.

Section 5.8 No Waiver of Future Approvals. The approval of the DRC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the DRC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 5.9. Variance. The DRC may, in its discretion, authorize variances from compliance with any of the provisions of the DRC Rules and Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration or any Supplementary Declaration; or (iii) estop the DRC from denying a variance in other circumstances. Variances may be issued in the sole and absolute discretion of the DRC for "after the fact" violations where removal of a non-conforming improvement might result in significant economic waste or hardship. For purposes of this Section, the inability to obtain approval or any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

Section 5.10. Removal of Nonconforming Construction. Any construction, alteration, or other work done in violation of this Article V shall be deemed to be nonconforming. Upon written request from Declarant, the DRC or another Owner, Owners shall, at their own cost and expense, promptly remove such nonconforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior the nonconforming construction, alteration, or other work.

Section 5.11. Application to Declarant. The provisions of Articles III, IV and V of this Declaration shall not apply to any Improvement or other act constructed or conducted on any Lot or property by Declarant.

ARTICLE VI **County Control Period**

Section 6.1 Declarant's Control. The "County Control Period" shall commence on the filing of this Declaration and shall expire upon the first to occur of the following: (i) when the County confirms in writing that sixty seven percent (67%) of the Lots in the Community (which, for purposes of this determination shall include any phases of the development that are intended to be annexed by the County) have been conveyed to Persons other than the County or developers holding title solely for the purpose of development and sale; or (ii) such date as the County or, if applicable, its successor or assign, in its sole discretion, declares in a recorded instrument that it shall no longer have any responsibility for enforcement of this Declaration.

ARTICLE VII **Annexation of Additional Property**

It is contemplated that the additional real property adjacent to the Community shown on *Exhibit B* hereto (hereinafter Annexation Property) may be annexed to and become subject to this Declaration.

Section 7.1. Annexation. The Declarant shall have the unilateral right, privilege, and option from time to time and at any time during the County Control Period, but shall not be obligated, to annex the Annexation Property or additional real property, whether in fee simple or leasehold, to this Declaration in phases of any size whatsoever, or to annex more than one such phase at any given time and in any given order. Any such property not specifically annexed by a properly recorded supplemental declaration shall not become subject to this Declaration. Supplemental declarations may contain such complimentary or supplementary additions and modifications of the provisions of this Declaration and may add, delete, or modify provisions of this Declaration as it applies to the property being annexed. The recordation of such supplemental declaration shall constitute and effectuate the annexation of the property described therein (unless a later effective date is specified in the supplemental declaration), making such real property subject to this Declaration, and thereafter, said real property shall be part of the Property for all intents and purposes of this Declaration and all of the owners of Lots in the annexed property shall automatically be Owners hereunder.

Section 7.2. No Approval Required for Annexation. Prior to expiration of the County Control Period, the Annexation Property and other additional property may be annexed to and become subject to this Declaration without the approval, assent or vote of the Owners.

Section 7.3. Withdrawal of Property. Declarant may, and hereby reserves the right to, unilaterally at any time remove and release any portion of the Property from coverage of this Declaration, provided that: (i) the owner of such portion of the Property consents in writing to the removal of the Property from coverage of this Declaration; and (ii) a Notice of Withdrawal of Property, executed by Declarant, is recorded. The Notice of Withdrawal of Property shall contain a legal description of the portion of the Property to be removed and released, and shall be effective upon the date of recordation of the Notice of Withdrawal of Property, or such later date as may be provided in the Notice of Withdrawal of Property.

ARTICLE VIII **Easements**

The rights and easements set forth in this Article VIII are in addition and without limitation to any other rights and easements created by or set forth in this Declaration or any supplemental declaration.

Section 8.1. Reservation of Easements. Declarant hereby reserves the right for itself and its successors and assigns to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easement and rights of way at any time for utilities, sanitary and storm sewers, cable television transmission facilities, drainage structures, communication lines and systems, refuse disposal, landscaping

maintenance, Roadways and other similar purposes, over, across, under and through the Property, and each Lot therein, including without limiting the generality of the foregoing, the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, or other entities and the right to grant, dedicate, designate, use and enjoy easements and/or rights-of-way for access purposes. These reserved rights shall be exercised in a manner that will cause the least practicable interference with the use or enjoyment for any Lot or Dwelling Unit. Each Owner consents to any such designation, granting conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner, or those claiming by, through or under an Owner, entering into any further agreement respecting such action or document; and provided further that such Owner and those claiming by, through or under an Owner, agrees to join in and execute such documents and instruments and such other things as may be necessary or convenient to effect the same promptly at the request of Declarant without payment of additional consideration.

Section 8.2. Easement for Ongoing Construction. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns, shall have and there is hereby created an easement over, under and upon the Property, including the Lots therein, to create and cause noise, dust, vibration and other nuisances, hazards, or annoyances created by or resulting from any work connected with or incidental to the development, construction and/or sale of any Lot or Dwelling Unit or other Improvement to the Property, including the Annexation Property, or any other community which Declarant, its successors or assigns may develop on property adjacent to or in the vicinity of the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances, hazards or annoyances.

Section 8.4. Recorded Easements. Each Lot shall be subject to all easements shown on any recorded subdivision map or file plan affecting such Lot, and to any easement of record or of use, which shall include without limitation, use for construction, installation and repair of utilities, maintenance, encroachment, drainage and ingress and egress.

Section 8.5. Maintenance Easement. Declarant hereby reserves to itself and its officers, agents, employees, successors and assigns, an easement upon, across, over, in, and under any portion of the Property, including Lots, and a right to make such use of such Property and easement area as may be necessary or appropriate to perform the rights, duties and functions which the Declarant is obligated or permitted pursuant to this Declaration, including without limitation the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of improvements on such Lot as required or permitted by this Declaration.

Section 8.6. Drainage Easements. Declarant hereby reserves to itself and its officers, agents, employees, successors, and assigns, an easement to enter upon, across, over, in, and under any portion of the Property, including Lots, for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of any portion of the Property so as to improve the drainage of water on the Property. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Owners and Declarant, as applicable, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work.

Section 8.7. Easements for Encroachments. There shall be reciprocal appurtenant easements of encroachment as between adjacent Lots due to the intentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (either initially by Declarant or subsequently in accordance with the terms of this Declaration) to a distance of not more than one foot, as measured from any point on the common boundary between said adjacent Lots, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner or Occupant. Any such easements for encroachment shall be for the encroachment and for the maintenance thereof.

Section 8.8. Easements for Sales Activities. Declarant, and its officers, agents, employees, successors, mortgagees and assigns, shall have the right and an easement to conduct extensive sales activities on and at the Community relating to the sale of any Dwelling Unit and/or Lot including the use of any Dwelling Unit or Lot owned by Declarant for model home displays, sales and management offices, parking and extensive sales displays and activities and the posting and maintenance of signs and other advertisements relating to such sales activities.

Section 8.9. Repair Easement. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Community, including any Lot, as may be reasonably necessary for the completion of improvements to and correction of defects and other "punchlist" and warranty items in the Community.

ARTICLE IX

Community Uses and Conditions

Section 9.1. Condition of Land.

(a) Owner understands that the Property and the Lots have been excavated, filled, and graded, and contain (or may contain) expansive soils, and may be subject to subsidence, settlement or expansion. Owner also acknowledges that standard construction techniques and applicable designs for the Dwelling Units' foundation slabs may result in a degree of non structural cracking or "spider" cracking

within the slabs and that certain slabs will contain contraction joints. Except as expressly set forth herein, Owner is relying and will rely solely upon Owner's own inspection and investigation of the land of the Community and surrounding properties, and is not relying and will not rely in any way upon any representations, statements, warranties, or other information or material furnished by Declarant or its representatives, whether oral or written, express or implied. Without limiting the generality of the foregoing, Owner assumes all risks associated with the condition of the Property and the Lot, the nature of the soils making up the Property and the Lot and of hazardous materials on, about, around, under, over or within the Community, including all risks of (i) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any hazardous material laws affecting the Community, (ii) all claims made or threatened by any third party against Owner or the Community relating to damage, contribution, compensation, loss or injury resulting from any hazardous materials, and (iii) Owner's discovery of any occurrence or condition on the land of the Community or any land adjoining or in the vicinity of the Community which might result in Owner or the Property being made subject to restrictions on ownership, occupancy, transferability or use of the Property or the Community pursuant to any applicable Environmental Laws.

(b) The Property has been graded and is comprised of excavated and/or built-up earth fill overlaying the pre-existing earth. Settlement and/or movement of the earth in the Property may occur. Each Owner is responsible for the maintenance of the Owner's Lot, for the prevention of sinkholes and/or settlement of the earth in or upon such Owner's Lot, and for taking reasonable efforts to prevent sinkholes and/or movement and settlement of the earth in adjoining properties. These efforts shall include the prevention of excessive water saturation of the earth near or beneath the Dwelling Unit, and the prevention of accumulation or ponding of water in any area. Without limitation as to the nature or extent of such efforts, and in addition to all other requirements in this Declaration, each Owner shall be responsible for and do the following things:

- (i) Keep all swales, ditches, drains, sub-drains and other drainage ways on or within such Owner's Lot free of debris, and open and in good and operating condition;
- (ii) Divert any surface water from any source (such as an eave, gutter or downspout) on a Lot away from the foundations of the Dwelling Unit and other improvements on such Owner's Lot and on adjoining properties;
- (iii) Refrain from excessive watering of landscaping in all places, but particularly near or next to any building foundation; and
- (iv) Maintain the earth within or upon such Owner's Lot such that it slopes and drains away from the foundation of the Dwelling Unit and other improvements as well as away from improvements on the adjoining properties. This includes filling in any depressions and refraining from creating any

depressions, including "planting beds," in the earth near or next to any foundation.

Section 9.2. Other Environmental Issues. Mold and mold spores are present throughout the environment and residential home construction is not, and cannot be, designed to exclude mold spores. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth. Although the Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven, the Owners should take positive steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse effects that may be caused by mold by, without limitation, doing the following:

(a) Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings, or stored clothing and bedding material, as well as many other household goods, could already contain mold growth. Avoid storing organic material in damp areas.

(b) Vacuum and clean regularly to help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.

(c) Keep the humidity in the Dwelling Unit low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans to remove excess moisture in the air, and to facilitate evaporation of water from wet surface.

(d) Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in the Dwelling Unit. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.

(e) Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors and any visible signs of mold.

(f) Seek to prevent water intrusion into the home by regular caulking and painting and maintaining the appropriate grade to allow water to drain away from the house and irrigation systems the property distance from the home.

(g) Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

Owner acknowledges and agrees that Declarant will not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of molds, mildew and/or microscopic spores unless caused by the sole negligence or willful misconduct of Declarant. Owner, on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Declarant and its officers, directors, partners, members, affiliates, subsidiaries, parent, agents, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including without limitation, attorneys' fees and costs of enforcing this indemnity) for property damages, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and /or microscopic spores.

Section 9.5. Nuisances Related to Adjacent Properties. Without in any manner limiting the preceding sections, each Owner, in purchasing or otherwise taking title to any Lot, does so with the express understanding and acknowledgment that the Community and the Owner's Lot may be periodically affected by various hazards and by noise, strong wind, dust, smoke, vog, earthshock, soot, ash, odor, mold and mold spores, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions, including but not limited to those attributable to winddrift and other weather factors (hereinafter Surrounding Use Effects) created by or attributable to the location of the Dwelling Unit, historical, existing, and prospective surrounding construction, development, agricultural, pasture, golf course, commercial and other non-residential uses and activities. Each Owner specifically approves all commercial and other non-residential uses and activities on surrounding properties, which may include, without limitation: (a) the items described in this Article IX or elsewhere in this Declaration; (b) quarrying (including the storage and use of munitions or other explosives); (c) real estate development and other changes in use (due to zoning changes or other governmental authorization or otherwise), construction, grading, improvement and maintenance of adjacent and surrounding properties, including Roadways, drainage, facilities, sewage treatment facilities and the like; (d) schools, churches, parks, recreational and related facilities; (e) presence of aboveground and underground radio transmission wires and high voltage electric lines within and around the Community, which lines purportedly may emit electric and magnetic fields; (f) irrigation of any and all surrounding lands with reclaimed water, treated effluent, or other non potable water sources; and (g) commute and off-hours (non-peak) traffic and parking (hereinafter Community Uses).

Section 9.6. Assumption of Risk, Waiver of Claims, Hold Harmless and Defend. Each Owner hereby covenants and agrees that each Owner, and the tenants, lessees, family, servants, guests, invitees, licensees and employees of each Owner,

assumes any and all risks associated with such Community Uses and the annoyances, inconveniences, Surrounding Use Effects and nuisances created thereby, and expressly waives all rights to any claim against the Declarant, its successors and assigns, its affiliates, successors-in-title or assigns arising out of or in connection with such activities, annoyances, inconveniences and nuisances, including but not limited to (i) any right to seek damages attributable thereto or for the design or the placement of improvements to the Community, any Lot or the surrounding property, or any part thereof, or related or adjacent facilities or (ii) any right to require Declarant and any of its related entities, affiliates, members, successors-in-title or assigns to correct, modify, alter, eliminate, or abate any such annoyances, activities, inconveniences or nuisances. Such waiver, however, shall not include claims arising out of or in connection with the gross negligence and/or willful misconduct of such entities. Each Owner covenants and agrees, on behalf of such Owner and any Occupant of its Dwelling Unit, (i) to accept any nuisance, inconvenience, irritation or annoyance which the Owner or any other Person claiming through the Owner may experience as a result of the activities and conditions described in this Article IX and elsewhere in this Declaration and the presence of mold in Dwelling Units and agrees to suffer and permit all actions and consequences incidental to such activities and conditions; (ii) to assume and does hereby assume any and all risks associated with the Community Uses and the annoyances, inconveniences, Surrounding Use Effects and other nuisances thereby created, as well as with the ongoing construction and sales activities; (iii) to waive and does hereby expressly waive all rights to make any claim against Declarant and any of its related entities, affiliates, members, successors-in-title or assigns, arising out of or in connection with the ongoing construction and sales activities, the Community Uses and the annoyances, inconveniences, Surrounding Use Effects and other nuisances thereby created, the clean-up or remediation of the same, including but not limited to (a) any claim for damages attributable thereto or for the design or the placement of Improvements to the Project, including the Lots therein, or the surrounding property, or any part thereof, or related or adjacent facilities, or (b) claims for the alteration, abatement or elimination thereof (such waiver, however, shall not include claims arising out of or in connection with the gross negligence and/or willful misconduct of such entities); (iv) to indemnify and hold harmless Declarant and its related entities, affiliates, successors-in-title or assigns from and against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) which may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Uses, Surrounding Use Effects, Community Uses and ongoing construction and sales activities; and (v) to defend Declarant and any of its related entities, affiliates, successors-in-title or assigns against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) which may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Uses, Surrounding Use Effects, Community Uses and ongoing construction and sales activities.

ARTICLE X
Declarant's Rights and Reservations

Section 10.1. Reserved Rights. The rights, reservations and easements of Declarant set forth in this Declaration shall be deemed accepted and reserved in each recorded supplemental declaration affecting the Property or Annexation Property and in each deed or other instrument by which any portion of the Property is conveyed by Declarant or any other Owner, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration shall be prior and superior to any other provisions of this Declaration and any supplemental declaration affecting the Property or Annexation Property and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration or any supplemental declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment. The rights, reservations and easements of Declarant set forth in this Article X are in addition to, and shall in no way affect or otherwise be interpreted to limit or restrict any of the rights, reservations and easements of Declarant contained elsewhere in this Declaration or in any supplemental declaration.

Section 10.2. Declarant's Rights to Complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, subdivision, consolidation, construction, promotion, marketing, sale and/or leasing of all or any portion of the Property and/or the Annexation Property; to construct or alter Improvements on any property owned by Declarant within such properties; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant within such properties; to post signs incidental to the development, subdivision, consolidation, construction, promotion, marketing, sale, leasing and/or use of such properties; or to apply for, process and receive zoning or changes in zoning or to uses of, or changes in density of, or other changes in any land use restrictions affecting all or any portion of the Property and/or the Annexation Property, so long as Declarant is the owner of the property affected. Notwithstanding anything to the contrary set forth herein, the provisions contained in Article III and Article V shall not apply to Lots owned by Declarant or to any Improvements proposed or made by Declarant in connection with its development, construction, promotion, marketing, sale or leasing of any Lot or Dwelling Unit or any other portion of the Property.

Section 10.3. Construction at or Adjacent to Community and Access. Each Owner, in purchasing or otherwise taking title to any Lot, shall do so with the express understanding and acknowledgment that construction activity by Declarant and other third parties or other Owners may continue in the Community area and adjacent areas after such Owner has occupied the Lot and that this activity may result in noise, dust, vibration or other hazards, nuisances or annoyances to the Owner and may limit the Owner's access to portions of such Lot or other areas adjacent thereto, and each Owner shall thereby accept any such inconvenience or annoyance and expressly waive any rights, claims, or actions which the Owner might otherwise have against Declarant

or third parties (including various contractors who may be involved in such construction activity) as a result of such circumstances.

Section 10.4. **Declarant's Right to Amend Declaration.** Declarant shall have the power to amend this Declaration reserved to Declarant under Article XIII.

Section 10.5. **Transfer of Declarant's Rights.** Any or all of the rights, reservations and easements of Declarant may be transferred to any other Person, provided that the transfer shall not enlarge a right or reservation beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by Declarant and recorded. Notwithstanding the foregoing any and all rights, reservations and easements of Declarant shall be transferred automatically (without the need of a recorded instrument) to any successor of Declarant by merger.

ARTICLE XI

Disclaimers and Disclosures

Section 11.1. **Security Disclaimer; Owner's Assumption of Risk.** Declarant shall in no way be considered insurer or guarantor of security within or related to the Project, and Declarant shall not be held liable for any loss or damage by reason of either failure to provide adequate security or ineffectiveness of security measures undertaken within or relating to the Community. Each Owner acknowledges and understands that Declarant and the DRC are not insurers and that each Owner assumes all risks for loss or damage to persons, to lots and to the improvements and personal property thereon, and further acknowledges that Declarant and the DRC have made no representations or warranties, nor has any Owner relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures or systems undertaken, recommended or installed within or related to the Community.

Section 11.2. **Declarant's Disclaimer of Representations.** Nothing in this Declaration shall be construed to prevent Declarant from modifying its plans for development of adjacent property owned by Declarant, or from developing, dedicating or conveying portions of the Property, including Roadways, for other uses. Any subdivision map for the Project, and any and all general plan maps or conceptual development plans or depictions of proposed improvements to areas surrounding the Property are intended to show only the layout, location, and dimensions of the Lots and are not intended to be and do not constitute any representation or warranty by Declarant. Notwithstanding anything to the contrary in this Declaration, no warranty or representation whatsoever is being made that any conceptual development plan depictions or any other plans presently envisioned for the development or the properties adjacent to, surrounding, or in the vicinity of Community can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to the Declaration) is or will be committed to or developed for a particular (or any) use or

developed in accord with any particular phasing plan or timetable or that if such land is once used for a particular use, such use will continue in effect.

Section 11.3. No Express or Implied Covenants or Restrictions. Nothing in this Declaration shall create, or be deemed to create, any express or implied covenants or restrictions with respect to any real property, including without limitation the Annexation Property shown in *Exhibit B* attached hereto, not annexed hereto in the manner provided in Article VII. Without limiting the generality of the preceding sentence, nothing in this Declaration shall limit or restrict the use of any real property not annexed hereto.

Section 11.4. Zoning and Plan. Each Owner, by accepting title to a Lot and becoming any Owner, acknowledges and is aware that the Community may be an extensive project the development of which may extend over many years, and agrees, so long as he or she is the Owner of the Lot, not to protest or otherwise object to: (i) zoning or changes in zoning or to uses of, or changes in density of, the Property in the Community; or (ii) changes in any conceptual or master plan in the Community; provided, in either case, said zoning, use, density, or conceptual, development or master plan revision is or would be lawful (including without limitation lawful by special permit, use permit, variance or the like) and is not inconsistent with what is permitted by this Declaration (as amended or supplemented from time to time). Anything to the contrary in this Section 11.4 notwithstanding, the provisions of this Section 11.4 shall be enforceable only to the extent not in violation of any applicable provision of law.

Section 11.5. Views. Views from Lots within the Community are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Lots and each Owner by accepting title to or an ownership interest in a Lot for such Owner and Owner's successors and assigns acknowledges and agrees and accepts that: (a) completion of the Community (through the construction of Dwelling Units or otherwise) and the future development of land adjacent to or in the vicinity of the Community may have a detrimental effect on the views from the Lots and other parts of the Community, and (b) there are no view easements or rights appurtenant to any Lot or the Community. Further, changes in the landscaping on adjacent property (which is not within the control of Declarant), through the addition, removal or trimming of trees or other vegetation, may occur in the future and may adversely affect views from the Community.

ARTICLE XII

Limitation on Declarant's Liability

Each Owner, by accepting title to any portion of the Property and becoming an Owner, for itself and any Person claiming through such Owner, and others who may acquire an interest in any portion of the Property, acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any officer, director, partner or shareholder of Declarant (or any partner or shareholder in any such assignee) shall have any personal liability to any Owner or

other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration.

ARTICLE XIII **Amendment**

Section 13.1. Amendment to Declaration. Amendments to this Declaration may be adopted only with the approval of Declarant and shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. After the expiration of the County Control Period, amendments may be adopted only with the approval of Owners representing at least sixty-seven percent (67%) of the Dwelling Units or Lots in the Community. Notwithstanding the foregoing, if any of the Dwelling Units or Lots owned by the Owners constituting the minimum sixty-seven percent (67%) referenced above are subject to Mortgages, then the approval of the eligible holders of the First Mortgages on such Dwelling Units shall also be required to materially amend this Declaration or any provision hereof relating to any of the following: (a) voting; (b) responsibility for maintenance and repair of the Project; (c) expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Project; or (d) imposition of any right of first refusal or similar restriction on the right of an Owner to sell transfer, or otherwise convey his or her Dwelling Unit. After expiration of the County Control Period, the amendment when adopted shall in all events bear the signatures of all members of the DRC, who shall specifically affirm that the amendment was properly adopted. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration, or at such later date as may be specified in the amendment.

Section 13.2. Effect of Amendment. Any amendment to this Declaration properly adopted will be completely effective to amend any and all provisions of this Declaration which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

Section 13.3. Declarant Power to Amend; Required Approvals. Notwithstanding the provisions of this Article XIII or any other provision of this Declaration:

- (a) This Declaration may only be amended by Declarant.
- (b) At all times during the County Control Period, Declarant reserves the right to unilaterally amend this Declaration without the approval of the Owners or any other Person; provided, however, that after the conveyance of the first Lot to an Owner other than Declarant, any such amendment shall have no material adverse effect upon the rights or obligations of the Owners of such Lots, except as expressly permitted in this Declaration; provided, however, Declarant shall at all times during the County Control Period have the absolute right of conveyance of Lots within the Community.

Section 13.4. Request Amendment; Legislative Change. The foregoing provisions of this Article XIII notwithstanding, and until the conveyance of all Lots in the Project, including the Annexation Property to Persons other than Declarant, Declarant reserves the right to unilaterally amend all or any part of this Declaration without the approval of the Owners or any other Person, to such an extent and with such language as may be required by law or requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or the Project, or by any chartered lending institution as a condition precedent to lending funds upon the security of all or any portion of the Property, including the Lots therein.

ARTICLE XIV **Term; Termination**

This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years (the "Initial Term"), and thereafter shall continue for successive periods of ten (10) years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by an affirmative vote of a majority of the Owners, after adequate prior written notification duly provided to all Owners, and if a majority of the Owners consent in writing to such termination within said 360-day period. After the County Control Period, this Declaration may be terminated at any time upon a vote in favor of termination by ninety percent (90%) of the Owners at a duly held meeting of the Owners for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to such vote to 180 days after such vote, from the holders of recorded First Mortgages on not less than sixty seven percent (67%) of the Lots or Dwelling Units upon which there are such recorded First Mortgages. If, after the expiration of the County Control Period, the necessary votes and consents are obtained, the DRC shall cause to be recorded a Certificate of Termination, duly signed by all members of the DRC. Thereupon, this Declaration shall have no further force and effect.

ARTICLE XV **General Provisions**

Section 15.1. Captions; Construction. Captions given to various articles and sections are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

Section 15.2. Severability. If any provision of this Declaration or the DRC Rules and Guidelines, or any section, clause, sentence, phrase or word, or the applicable thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration or DRC Rules and Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration or DRC Rules and Guidelines shall be construed as if such invalid part were never included therein.

Section 15.3. Rule Against Perpetuities. If any of the options, privileges, covenants or gifts created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities

Section 15.4. Mortgage of Lots and Parcels. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for such Owner's respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of such Owner's Lot.

Section 15.5. Power of Attorney. Unless otherwise specifically restricted by the provisions of this Declaration, in any instance in which the Declarant is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Declarant, as appropriate, as their attorney-in-fact for the purposes of taking such action or doing such acts, including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any increase therein, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

Section 15.6. Gender and Number. Masculine, feminine and neuter references herein, whether singular or plural, each shall include the others as the context requires.

Section 15.7. Interpretation. Except for judicial construction, the Declarant, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Property benefitted or bound by the provisions hereof.

Section 15.8. References to Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the provisions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions hereof shall be binding upon the grantee-Owner or other person claiming through any instrument and such person's

heirs, executors, administrators, successors and assigns as though set forth in full in such instrument.

Section 15.9. Incorporation of Exhibits. The Exhibits as they may be amended from time to time in accordance with this Declaration, are incorporated into this Declaration by this reference.

Section 15.10 Notices. All communications required or provided for hereunder shall be in writing and shall be deemed duly communicated only when sent by United States express mail, or certified mail, postage prepaid, addressed:

If to the Declarant:

County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720
Attention: Mayor Kenoi

With a copy to:

The Office of Housing and Community Development
50 Wailuku Dr.
Hilo, Hawai'i 96720
Attention: Stephen Arnett

If to the Owner:

To the address of the Owner as set forth in the document by which it claims an interest in a Lot

If to any other person:

To the person or entity at its last known or post office address

Or, in each case, to any address as may hereunder have been designated most recently. Any communication so mailed shall be deemed delivered three (3) business days after mailing.

Section 15.11 Choice of Law. The Declaration shall be governed by and construed in accordance with the laws of the State of Hawai'i.

Section 15.12 Attorneys' Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration, the losing party or parties as determined by the court or other hearing authority shall pay the attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding.

DECLARANT has duly executed this Declaration as of the date first referenced above.

COUNTY OF HAWAI'I

By



WILLIAM P. KENOI
Its Mayor

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On January 28, 2013, before me personally appeared WILLIAM P. KENOI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i, the foregoing instrument was signed and sealed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2010), as amended, and said WILLIAM P. KENOI acknowledged said instrument to be the free act and deed of said County of Hawai'i.



[Handwritten Signature]

Notary Public, State of Hawai'i
Printed Name: Lisa Robertson
My commission expires: 05/20/2016

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Declaration of Restrictive Covenants for Kamakoa Nui</u>	
Doc. Date: <u>01/28/2013</u>	<input type="checkbox"/> Undated at time of notarization
No. of Pages: <u>20</u> Exhibits	Jurisdiction: <u>Third Circuit</u>
<u>[Handwritten Signature]</u>	<u>01/28/13</u>
Signature of Notary	Date of Notarization and Certification Statement
<u>Lisa Robertson</u>	
Printed Name of Notary	

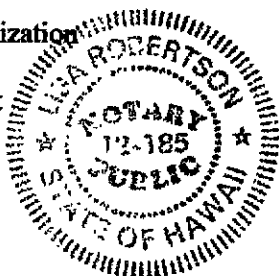


EXHIBIT A

Legal Description of Property

All of the certain parcel of land situate as Waikoloa, South Kohala, Island of Hawaii, State of Hawaii, being Lots 1 through 93, inclusive of the "KAMAKOA PHASE 1-A SUBDIVISION" as shown on File Plan Number 2469, filed in the Bureau of Conveyances of the State of Hawaii.

EXHIBIT B1 & B2

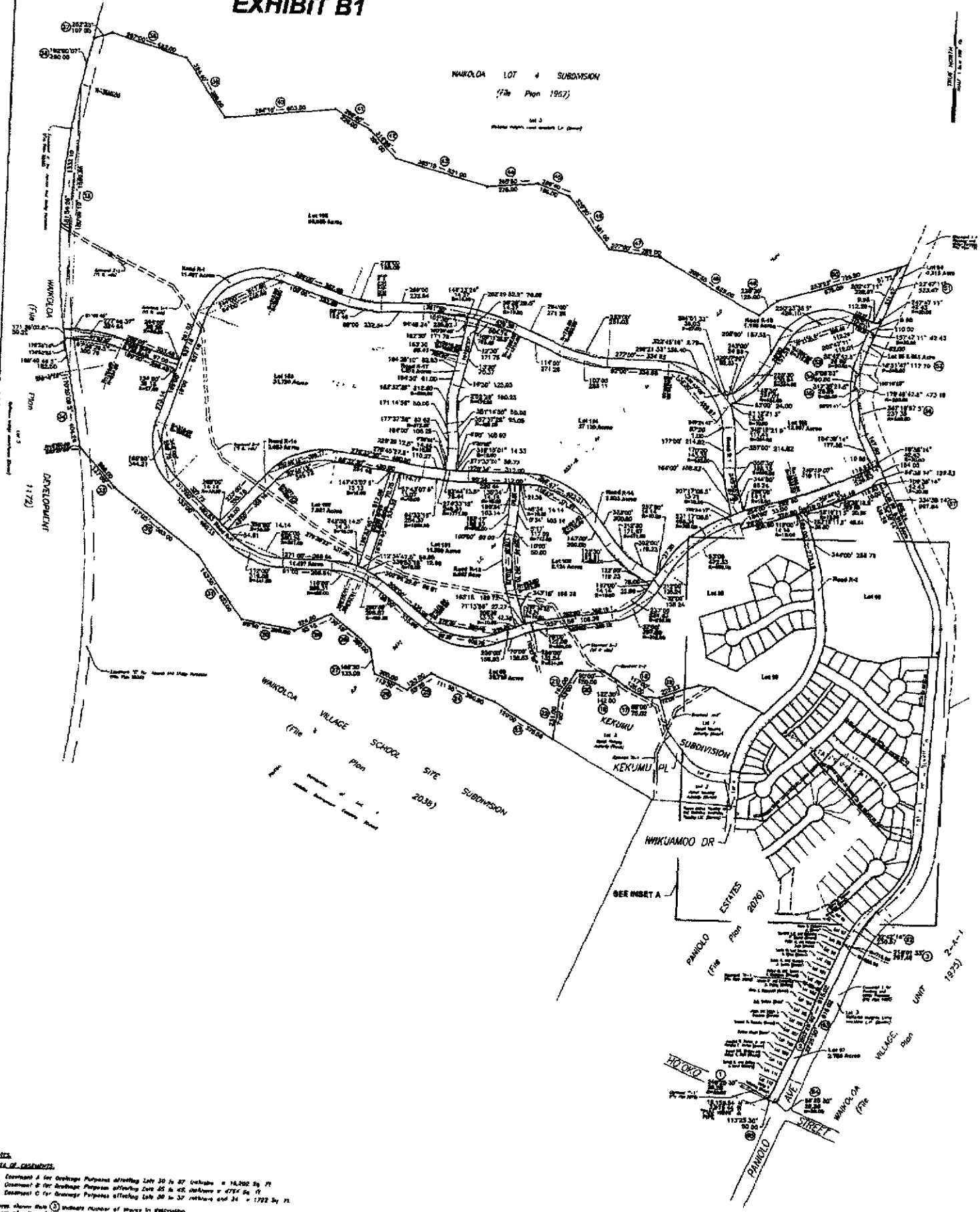
Depiction of Annexation Property

EXHIBIT B1

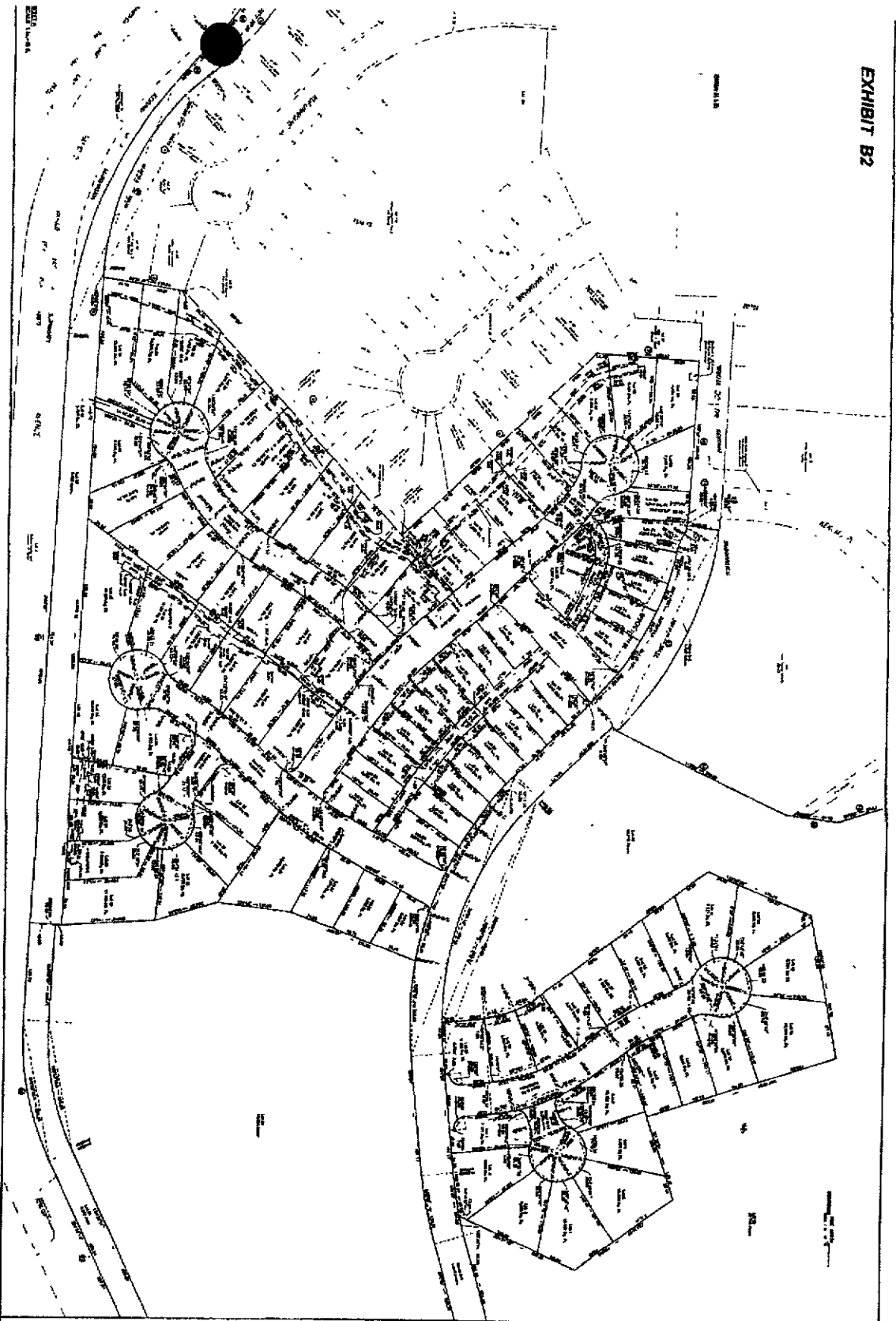
WAIKOLA LOT 4 SUBDIVISION
(File Plan 1967)

Map 3
Hawaii Map & Survey Co. (plotted)

TERR. NORTH
Scale 1" = 100'



NOTES
AREA OF COVENANTS
Covenant A for Easement Purpose affecting Lots 20 to 27 (includes a 14,000 Sq. Ft.
Covenant B for Drainage Purpose affecting Lots 25 to 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



STATE OF HAWAII

KAKAOA PHASE I-A SUBDIVISION

LAND SHOWN ON THE MAPS ARE THE PROPERTY OF LOT 1 OF
 KAKAOA PHASE I-A SUBDIVISION, THE CITY AND COUNTY OF HAWAII,
 COUNTY OF HAWAII, TERRITORY OF HAWAII, AND THE
 COUNTY OF HAWAII, TERRITORY OF HAWAII, AND THE
 COUNTY OF HAWAII, TERRITORY OF HAWAII.

of which 3000 square feet of area is
 being used as a public parking area and
 lot 178 of KAKAOA PHASE I-A SUBDIVISION.

APPROVED AND FORWARDED:
 AND REGISTERED OF DEEDS, 1988, 1989 &
 1990.

THE HONORABLE CLERK OF THE COURT
 OF THE TERRITORY OF HAWAII
 AND THE COUNTY OF HAWAII

APPROVED AND FORWARDED:
 AND REGISTERED OF DEEDS, 1988, 1989 &
 1990.

THE HONORABLE CLERK OF THE COURT
 OF THE TERRITORY OF HAWAII
 AND THE COUNTY OF HAWAII

APPROVED AND FORWARDED:
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 1990.

THE HONORABLE CLERK OF THE COURT
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APPROVED AND FORWARDED:
 AND REGISTERED OF DEEDS, 1988, 1989 &
 1990.

APPROVED AND FORWARDED:
 AND REGISTERED OF DEEDS, 1988, 1989 &
 1990.

APPROVED AND FORWARDED:
 AND REGISTERED OF DEEDS, 1988, 1989 &
 1990.

EXHIBIT C
Sample Warranty Deed

LAND COURT

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail or Pick-up
Phone#: _____

FILL IN NAME AND ADDRESS BELOW:

Office of the Corporation Counsel
(WVB)
333 Kilauea Avenue, 2nd Floor
Hilo, Hawai'i 96720

DOCUMENT CONTAINS _____ PAGES

TITLE OF DOCUMENT: WARRANTY DEED	
PARTIES TO DOCUMENT	
GRANTOR:	COUNTY OF HAWAI'I 25 Aupuni Street Hilo, Hawai'i 96720
GRANTEES:	
AFFECTS TAX MAP KEY: (3)	

WARRANTY DEED

This WARRANTY DEED, made this _____ day of _____, 20____, by and between COUNTY OF HAWAI'I, a municipal corporation of the State of Hawai'i, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, County and State of Hawai'i 96720, (hereinafter called the "Grantor"), and **(name of purchaser), (marital status)**, whose mailing address is _____, (hereinafter called the "Grantee").

WITNESSETH:

THAT for TEN DOLLARS (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell, and convey unto the Grantee all of the property more particularly described in Exhibit "A" attached hereto (hereinafter called the "Property"), and made a part hereof, SUBJECT TO the encumbrances noted herein and therein.

TOGETHER with all buildings, improvements, rights, easements, privileges, and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith.

SUBJECT TO the Grantor's rights to repurchase the dwelling unit and property pursuant to terms and conditions contained in Exhibits "B" and "C" attached hereto and made a party hereof; and further subject to covenants, conditions, and restrictions and other provisions contained in the Declaration of Covenants, Conditions and Restrictions of Kamakoa Nui Housing described in said Exhibit "D".

TO HAVE AND TO HOLD the same unto the Grantee as **(tenancy to be inserted)**, in fee simple forever.

For and in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the Property herein described in fee simple; that said Property is free and clear of and from all liens and encumbrances, except, for the lien of real property taxes not yet by law required to be paid and except as may herein specifically set forth above and in said Exhibit "A", Exhibit "B" and/or Exhibit "C"; that the Grantor has good right to sell and convey said Property as aforesaid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

Any and all rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust, and assigns.

The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations and their and each of their respective successors, heirs, personal representatives, and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purpose deemed to be joint and several.

IN WITNESS WHEREOF the Grantor and Grantee have executed these presents on the day and year first above written.

COUNTY OF HAWAII

By


WILLIAM P. KENOI

Its Mayor

GRANTOR

GRANTEE

STATE OF HAWAI'I)
)
COUNTY OF HAWAI'I) SS.

On _____, before me personally appeared WILLIAM P. KENOI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i, the foregoing instrument was signed and sealed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2010), as amended, and said WILLIAM P. KENOI acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Signature

Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires: _____

NOTARY CERTIFICATION	
Doc. Date: _____	No. of Pages: _____
Notary Name: _____	_____ Circuit
Doc. Description: _____	

Notary Signature _____	Date _____

**INSERT NOTARY PAGE
FOR GRANTEE**