

TG-255376

RECORDATION REQUESTED BY:
TITLE GUARANTY ESCROW SERVICES, INC.
P.O. Box 1837
Kailua-Kona, Hawaii 96740
AFTER RECORDATION, RETURN TO:

86-18048

REGISTERED A8:01

TITLE GUARANTY ESCROW SERVICES, INC.
P.O. Box 1837
Kailua-Kona, Hawaii 96740

19293 503

RETURN BY: MAIL () PICKUP ()

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR KANEHOA SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, KANEHOA HUI, a registered Hawaii limited partnership, whose principal place of business and post office address is Kamuela, Hawaii 96740, (hereinafter called the "Developer") is the purchaser of those certain parcels of land more particularly described in Exhibit "A" attached hereto and made a part hereof and being located in the KANEHOA SUBDIVISION (hereinafter referred to as the "Subdivision"); and

WHEREAS, Developer intends to subject said real property, together with such improvements and additions as hereinafter may be made thereto, to the covenants, restrictions, easements and conditions hereinafter set forth, each and all of which is and are for the benefit of said Lots and each owner thereof;

NOW, THEREFORE, Developer hereby makes the following declarations as to limitations, restrictions, and uses to which such real property may be put and hereby specifies that such declarations shall constitute covenants running with the land, as provided by law, and shall be binding on and inure to the benefit of Developer, its successors and assigns, and all subsequent owners and all parties having any right, title or interest in the real property or any part thereof, and their respective heirs, successors, legal representatives and assigns, this Declaration being designed for the purposes of keeping said subdivision desirable and uniform as specified herein:

1. DEFINITIONS. The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.01. "Association" shall mean and refer to the Kanehoa Community Association, Inc., its successors and assigns.

1.02. "Board" shall mean the Board of Directors of the Association.

1.03. "By-Laws" shall mean the By-Laws of the Association, which have been adopted and as the same may from time to time be amended.

1.04. "Charter" shall mean the Charter of Incorporation of the Association and as the same may from time to time be amended.

1.05. "Common Area" shall mean all the real property owned in fee by the Association, and, to the extent of the interest of the Association, any real property held by the Association under grant of easement, lease, tenancy agreement or other limited estate or interest, together in each case with all improvements from time to time constructed thereon.

1.06. "Declaration" shall mean and refer to this instrument, as the same may hereafter be amended.

1.07. "Directors" shall mean and refer to the members of the Association's Board of Directors.

1.08. "Improvements" shall mean and refer to all buildings, outbuildings, roads, pipe lines, driveways, parking areas, fences, retaining walls, stairs, decks, hedges and plantings, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind.

1.09. "Lot" shall mean and refer to each of Lots 1 to 26, inclusive, as shown on File Plan 1845, it being understood and agreed that Lots 27 to 30, inclusive, as shown on said File Plan, shall be excluded from the applicability of this Declaration.

1.10. "Majority of the Owners" means the Owners holding more than 50% of the votes of the Owners present at any duly called meeting of the Association, each Lot being entitled to one vote. Owners will have the right to vote by proxy.

1.11. "Owner" shall mean and refer to the record owner, whether one or more individuals, corporations, partnerships or other legal entity or entities of the fee simple title to any Lot, but excluding mortgagees in such capacity; provided, however, that to such an extent and for such purposes, including voting as shall be provided in a lease or agreement of sale of any Lot recorded in the Bureau of Conveyances and filed with the Association, or provided in the By-Laws of the Association, the lessee or purchaser of such Lot shall be deemed the Owner thereof while the same is in effect. When a Lot is owned by more than one person, written notice given to one of the owners shall constitute notice to all owners.

2. Use of Lots.

2.01. Each lot and every portion thereof shall be used only for purposes permitted by applicable law for the time being applicable thereto, and no building other than a single dwelling house designed and built for the use and occupancy of a single family shall be constructed, placed or maintained on any Lot; provided that additional dwellings under "ohana" zoning laws, servants' quarters and guest quarters and other buildings allowed under applicable law may be constructed and placed or maintained on the Lot if placed or maintained in conformity with County and State laws and regulations and if the building of such structure otherwise conforms with these covenants, conditions and restrictions; provided, further, that no quonset hut, trailer, mobile home, shack, tent, temporary buildings or structures, or outdoor privy shall be erected or placed upon any Lot.

2.02. Business or Offensive Uses, Animals. No retail or wholesale shop or store shall be erected, or any business, industry, trade, shall be carried on upon any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or a nuisance to owners of other Lots. Animals (except pigs) may be kept on each Lot, provided that the Owner will construct and maintain stockproof fences enclosing such animals.

2.03. Sanitation and Lot and Building Maintenance. No Lot shall be used or maintained as a dumping ground or visible storage place for discarded or old vehicles, or unsightly accumulations of scraps, building materials, rubbish or the like. Each Lot and all improvements thereon shall be maintained by the Owner thereof in good condition and repair.

2.04. Electric Lines. All electric, telephone and other transmission wire and lines shall be placed underground and no poles or other above-ground structures shall be used to support such lines.

2.05. Compliance with Laws and Ordinances. Each Owner will comply with all Federal, State and County laws, statutes and ordinances with respect to the construction of improvements or use of the property, including but not limited to the State Land Use law as set forth in Chapter 205, Hawaii Revised Statutes. In the event of a conflict between said laws, statutes and ordinances and these covenants, the former shall be controlling. Failure to comply with any such law, statute or ordinance shall be considered a violation and breach of these covenants.

3. ASSOCIATION. The Association shall have all the rights, obligations, powers and duties, subject to the terms of the Declaration, to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Subdivision:

3.01. Membership. The Owners of each Lot shall, automatically and simultaneously with the conveyance of title to such Owners, become a member of the Association. The Association shall accept all Owners as members of the Association.

3.02. Property Ownership. The Association shall accept title to all common areas and other property from time to time conveyed to it by Developer. The Association may also acquire and accept title to any other property, real, personal or mixed, provided that nothing herein shall be construed to authorize the Association to acquire or invest in property primarily for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, or activity for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them or their designees of any portion of the Association property to help defray the costs of construction and maintenance.

3.03. Common Areas. The Association shall maintain or provide for the maintenance of any common areas and any other property owned by the Association, provided that the Association shall have no obligation to maintain in good order and repair any improvement constructed upon any common area by any Owner but may use all legal means to compel such Owner to maintain the same.

3.04. Services. The Association may contract for, employ or otherwise provide for maintenance of landscaping, roads and easements, for security services, and refuse disposal services for the Subdivision.

3.05. Insurance. The Association shall obtain and maintain in force the following policies of insurance:

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

(ii) Comprehensive general liability insurance with limits of not less than \$500,000.00 for injury to or death of one person and \$1,000,000.00 for injury to or death of more than one person and \$500,000.00 for property damage in any one occurrence, with respect to all roads and easements through or adjoining the Subdivision, or arising out of ownership, maintenance or use thereof by the Association.

The policies referred to hereinabove shall name as insured, the Developer (so long as the Developer is the Owner of any Lots), the Association and its officers, the Board and its members, and with respect to any liability arising out of the maintenance or use of any common areas, the Owners. The Association may obtain and maintain in force any policies of insurance covering any other reasonable risks as may be determined to be proper and

necessary or advisable in the discretion of the Board. Each and every policy of insurance obtained by the Association shall expressly waive any and all rights of subrogation against the Developer, the Board, and their respective representatives and employees, and against any Owner.

3.06. Enforcement. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for any trespass, damage or otherwise, by the Directors or agents appointed by them, to enter upon any Lot for the purpose of maintaining and repairing any such Lot if for any reason whatsoever the Owner thereof fails to maintain and repair such as required herein, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of the terms of the Declaration. The Association shall also have the power and authority from time to time in its own name on its own behalf or in the name and behalf of any Owner who consents thereto to commence and maintain actions or suits to restrain and enjoin any breach or threatened breach of any of the provisions of the Declaration by any Owner or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration.

3.07. Authority to Contract. In fulfilling any of its obligations or duties under the terms of the Declaration, the Association shall have the power and authority to contract and pay for or otherwise provide for the maintenance, restoration and repair of the common areas and all improvements of whatever kind or whatever purpose from time to time located thereon, and of any other property, real or personal of the Association, and to carry out the functions of the Association as set forth in the Declaration on such terms and conditions as the Association shall deem appropriate and to contract and pay for or otherwise provide for utility services as may from time to time be acquired for the common areas, to contract and pay for professional or nonprofessional services as may be required by the Association to discharge their responsibilities hereunder, to contract and pay for protection services as the Association may from time to time deem necessary, to grant and convey to any third party, upon reasonable compensation, or such other terms as the Board may approve, such easements, rights-of-way, parcels or strips of land in, on, over or under any common area for the purpose of constructing, operating or maintaining thereon public roads, walkways, streets, driveways, parkways and public areas, or for installing, operating, maintaining poles, wires, conduits, transformers or other facilities for the transmission of electricity, power, television and drains and conduits for public and private sewers and storm drain systems and other utilities.

3.08. Manager. The Association may from time to time employ the services of a manager on such terms and conditions as the Association may deem proper. Such manager shall have such powers as may be delegated to him by the Association, provided that the Association cannot delegate the power to execute any contract binding upon the Association for a sum in excess of \$500.00 or the performance of any work or services which are not to be completed within thirty (30) days, or the power to sell, convey, mortgage or encumber any property of the Association other than maintenance equipment no longer serviceable.

3.09. Powers of Association. The Association shall have the powers set forth in this Declaration to be exercised by the Association, including without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action whether or not expressly authorized by the Declaration as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of the Declaration and of the Subdivision rules. The Association shall have all powers set forth in the Charter, together with its general powers as a nonprofit corporation; subject, however, to any limitations upon the exercise thereof expressly set forth in the Charter or By-Laws or in the Declaration.

including the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association and to perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the expressed powers of the Association.

3.10. Kanehoa Subdivision. The Association, through its Board of Directors, may from time to time, subject to the provisions hereof, adopt and amend rules and regulations to be known as the Kanehoa Subdivision Rules governing the use of any common areas, the use of any streams or waterways, roads or paths through the Subdivision (other than public roads), the collection and disposal of refuse within the Subdivision, the burning of any open fires, parking restrictions and limitations in the Subdivision, and other reasonable restrictions governing the use or occupancy of Lots so as to promote the purposes for which the Declaration is executed. A copy of the Kanehoa Subdivision Rules as the same may from time to time be amended shall be available at all times at the post office address of the Association.

4. FUNDS AND ASSESSMENTS.

4.01. Operating Fund. The Association shall maintain an operating fund into which shall be deposited all monies received by the Association whether from maintenance assessments, special assessments, user fees, fines, income attributable to the fund itself or any other rents, charges or fees levied by the Association. Said fund shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations and the exercise of its rights and powers under the Declaration and the Charter and By-Laws of the Association.

4.02. Maintenance Assessments.

(a) Within thirty (30) days prior to the commencement of each fiscal year and the Association's annual meeting, the Board shall prepare an estimate of the costs and expenses to be incurred by the Association during such fiscal year in performing its functions, duties and obligations, including but not limited to any obligation to provide upkeep and maintenance of all landscape areas along Subdivision roads. From said estimates, the Board shall subtract an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to maintenance assessments in the preceding fiscal year; and the sum derived (hereinafter called the "total assessment basis") shall constitute the basis for determining maintenance assessments in each fiscal year. The Board shall cause its budget for the operating fund (and the total assessment basis) to be delivered to each Owner at least fourteen (14) days prior to the annual meeting. The budget for the operating fund (and the total assessment basis) shall become effective unless disapproved at the annual meeting by a majority of the Owners present at such meeting. Notwithstanding the foregoing, however, in the event the budget for the operating fund (and the total assessment basis) is disapproved by the Association at its annual meeting or the Board fails for any reason to determine the budget for the operating fund (and the total assessment basis) for the succeeding fiscal year, then and until such time as a budget for the operating fund (and the total assessment basis) has been determined as provided herein, the budget for the operating fund in effect for the then current fiscal year shall continue for the succeeding fiscal year.

(b) The individual assessments to be paid by the Owners for their respective Lots shall be equal, except that the Association may impose a greater proportion upon any Lot which, or the owner or occupant of which, utilizes the roads or common areas to a substantially greater degree, or contributes to the wear and tear thereof in a substantially greater degree.

than is usual in the subdivision, for the period of such utilization.

(c) If at any time during any fiscal year, the maintenance assessment proves inadequate for any reason, including the inability to collect any Owners' share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(d) Maintenance assessments shall be due and payable by the Owners to the Association in such manner as shall be fixed by the Board.

4.03. Special Assessments. The Board shall levy a special assessment against any Owner whose acts or failure or refusal to act or to otherwise comply with the Declaration or the Association Rules, causes the Association to incur any expense which would not normally have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the extraordinary expense incurred and shall be due and payable to the Association when levied. Such extraordinary expenses shall be deemed to include without limitation, engineers', architects', attorneys' and accountants' fees when reasonably incurred by the Association.

4.04. Late Charges, Interest and Costs of Collection. If any assessment (including any special assessment) or any installment thereof is not paid within twenty (20) days after it is due and payable, the delinquent Owner shall be liable for and shall pay a late charge of \$100.00 or five percent (5%) of the amount due, whichever is greater or such amounts as the Association may from time to time establish, to reimburse the Association for the cost of extra handling. In addition, all delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum from the due date thereof until fully paid. In connection with the collection of assessments, each Owner shall be liable for all costs of collection including court costs and reasonable attorneys' fees based on the time spent and regardless of the amount being collected.

4.05. Nonpayment, Lien and Remedies. Each assessment under this Declaration shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of an agreement of sale, deed, lease or other instrument of conveyance, whether or not it shall be so expressed in any such agreement of sale, deed, lease or other instrument, shall be deemed to covenant and agree to pay the same to the Association, provided that no mortgagee, or any officer, director or trustee thereof, shall be personally obligated to pay any assessment. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of any unpaid assessment, together with the amount of any late charge, interest aforesaid, and costs, including reasonable attorneys' fees, shall be and become, notwithstanding any lease applicable to the property, a lien upon the fee simple interest in the property upon the filing by the Association of a notice of default in the Bureau of Conveyances of the State of Hawaii, and in the event a lessee of any Lot is deemed to be the Owner of such Lot, the lien shall attach to both the fee simple and leasehold estates. In case of a voluntary conveyance the grantee, vendee or lessee of any Lot shall be jointly and severally liable with the grantor, vendor or lessor for all unpaid assessments together with any late charge, interest, costs of collection and reasonable attorneys' fees which shall be a charge against the Lot at the time of the conveyance, without prejudice to the right of the person receiving the conveyance to recover from the person making the conveyance the amounts so expended by the person receiving the conveyance. An amount shall be deemed a "charge" against a Lot as soon as it accrues even though no lien may have been filed. Any party to a conveyance shall be entitled upon written request to a statement from the Association setting forth the amount of any unpaid

assessment together with any late charge, interest, cost of collection and reasonable attorneys' fees which may be a charge against a Lot; and neither the person making or receiving the conveyance shall be liable for, nor shall the Lot conveyed be subject to, a lien for any amount in excess of the amounts set forth in such statement. If the Lot is owned by more than one person, all co-owners shall be jointly and severally liable for all amounts constituting a charge against or lien upon the Lot. Such lien shall be subject to and subordinate to the lien of any mortgage on the Lot of such Owner described in paragraph 4.07 below. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of assessments which become due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot, or the purchaser or transferee thereof with regard to assessments thereafter becoming due except as to any mortgage as provided above. Association liens may be foreclosed through suit in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

4.06. Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the indebtedness secured by the lien upon the Lot of the Owner, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing the certificate.

4.07. Subordination of Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any recorded mortgage or mortgages now or hereafter placed upon any of the Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure, and such sale or transfer shall not relieve such Lot from liability for any assessment thereafter becoming due, nor from the lien of any subsequent assessment.

5. ENFORCEMENT.

5.01. Enforcement. Except as otherwise herein specifically provided, the Developer, the Association or any Owner or Owners shall have the right to enforce any and all of the restrictions, covenants and conditions, obligations, charges and liens now or hereafter imposed by or under the Declaration upon Owners or upon any property within the Subdivision and the costs of enforcement, including court costs and attorneys' fees shall be paid by any Owner who has violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy, when due, any such obligation charge or lien. No entry upon a Lot of any Owner or other action to enforce any such restriction, covenant, condition, obligation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner in default to cure or rectify such default or breach involved. Any failure to enforce the provisions of any restriction, covenant, condition, obligation, lien or charge of the Declaration shall not constitute a waiver of any right to enforce any such provision or any other provision of the Declaration in any other case against or with respect to the same Owner or Lot or any other Owner or Lot. All the restrictions, covenants and conditions of the Declaration shall be liberally construed together to promote and effectuate the fundamental concepts and aims of the Subdivision as provided in this Declaration.

5.02. Illegality. Anything herein to the contrary notwithstanding, the Owners shall keep and observe all laws and regulations promulgated by any governmental body having jurisdiction over such Owner or over the subdivision. Anything herein to the contrary notwithstanding, if any uses to which a Lot may be put under the provisions of this Declaration shall be or become illegal under applicable zoning ordinances or statutes, an Owner may use his Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Declaration which can lawfully apply to the Lot as so used. The restrictions, covenants and conditions of the Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof or of any such restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

6. AMENDMENT AND TERM.

6.01. Amendment. All of the restrictions, covenants and conditions in the Declaration, as amended herein, may be amended or repealed by an affirmative vote of the Owners holding at least seventy-five percent (75%) of the votes in the Association, at a meeting of the Association duly called, the notice of which meeting shall have stated as a purpose the consideration of such amendment or repeal as the case may be. Any amendment or repeal shall not become effective, however, until a written instrument setting forth in full the amendment or repeal of the Declaration and certifying that said amendment or repeal has been approved by vote of the Owners pursuant to this paragraph 6.01 shall have been executed by two (2) duly authorized officers of the Association and recorded in the Bureau of Conveyances.

6.02. Term. All of the limitations, restrictions, covenants and conditions of the Declaration, as amended herein, shall continue and run with the land and remain in full force and effect, subject to amendment and repeal as provided above, for a period of twenty (20) years from the date hereof; provided, however, that if within one (1) year prior to the expiration of said period, the Owners holding at least fifty percent (50%) of the votes present at the meeting duly called to extend the term of this Declaration vote to continue the provisions of the Declaration, such provisions in effect immediately prior to the expiration date shall be continued for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each if within one (1) year prior to the expiration of any such period, the Owners by similar vote to continue the provisions of the Declaration as aforesaid.

IN WITNESS WHEREOF, KANEHOA HUI has executed these presents on Jan. 20, 1986, but to be effective as of February 14, 1985.


KANEHOA HUI

By WAIMEA PROPERTIES INC.

By Melvin B. Hewett
Melvin B. Hewett, President
General Partner

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 20 day of January, 1986, before me appeared MELVIN B. HEWETT, to me personally known, who, being by me duly sworn, did say that he is the President of WAIMEA PROPERTIES INC., a Hawaii corporation, General Partner of KANEHOA HUI, a Hawaii limited partnership; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said MELVIN B. HEWETT acknowledged said instrument to be the free act and deed of said corporation as such General Partner.



Notary Public, State of Hawaii. Notary Public, Third
Judicial Circuit, State of Hawaii
My commission expires 7/12/87

EXHIBIT "A"

Those certain parcels of land situated on the southerly side of Kawaihae-Waimea Road (F.A.P. MRH 11-C) at Ouli, South Kohala, Island of Hawaii, State of Hawaii, described as follows:

LOTS 1 to 26 inclusive, as shown on the map thereof filed in the Bureau of Conveyances of Hawaii as File Plan No. 1845.