

R-450

STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT

REGULAR SYSTEM

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T. Red Co., Inc.
Seven Waterfront Plaza Suite 525
500 Ala Moana Boulevard
Honolulu, HI 96813

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MARLENE ELISAGA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made this 27th day of December, 1991 by T. Red Co., Inc., Hawaii corporation, whose mailing address is Seven Waterfront Plaza, Suite 525, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property situated at Captain Cook, South Kona, Island and County of Hawaii, State of Hawaii, more particularly described in Exhibit "A" incorporated herein and made a part hereof by this reference; and

WHEREAS, Declarant intends to develop said real property into a subdivision to be known as "Kealakekua Bay Estates" and desires to ensure the attractiveness of the individual lots and improvements within said subdivision and to prevent any future impairment thereof, to prevent nuisances, and to protect, preserve and enhance the values and amenities of said subdivision;

NOW, THEREFORE, Declarant hereby declares that all of the lots and parcels now or hereafter included within Kealakekua Bay

Estates shall be held, sold, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of said property and for the mutual benefit of the owners of any interest therein.

ARTICLE I DEFINITIONS

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

1.01 Association. "Association" means the Kealakekua Bay Estates Community Association, a non-profit association described in Article VII, and its successors and assigns.

1.02 Board. "Board" means the Board of Directors of the Association.

1.03 Buildable Area. "Buildable Area" means the area of a Lot, as hereinafter defined, located within the building setback lines established in accordance with Section 3.23 (d) of this Declaration.

1.04 By-Laws. "By-Laws" means the By-Laws of the Association which are attached hereto as Exhibit "B" and incorporated herein and made a part hereof by this reference, as such By-Laws may from time to time be amended.

1.05 Common Area. "Common Area" means all of the Real Property and easements which are owned, by or in favor of, the Association and which have been or may be used by more than one Owner, including Roads, the Floodway, and all planting and restricted access easements the use of which has been reserved in documents of conveyance for Lots in Kealakekua Bay Estates and which by such documents are specifically subject to this Declaration.

1.06 Declarant. "Declarant" means T. Red Co., Inc., its successors and assigns, including, any other Person or Persons who the Declarant may designate as having the powers and functions of Declarant or some of the powers and functions.

1.07 Declaration. "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as such Declaration may from time to time be amended.

1.08 Design Committee. "Design Committee" shall mean the Committee created pursuant to Article V hereinafter set forth.

1.09 Design Committee Requirements. "Design Committee Requirements" shall mean those rules adopted by the Design Committee pursuant to Section 5.04 hereof, a true copy of which is attached hereto as Exhibit "C".

1.10 Excavation. "Excavation" means any disturbance of the surface of the land (except temporarily for planting) which results in the removal of earth or rock for a depth of more than eighteen inches.

1.11 File or Filed. "File" or "Filed" means with respect to any subdivision map, the map which has been Filed in the Bureau of Conveyances of Hawaii.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.28 Subdivide. "Subdivide" means the division of any Lot into two or more parcels and does not include either (i) the consolidation of any two or more lots or (ii) the consolidation and

resubdivision of two or more lots provided that such consolidation and resubdivision does not result in an increase in the overall number of Lots.

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

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

ARTICLE II PROPERTY SUBJECT TO DECLARATION

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

ARTICLE III RESTRICTIVE COVENANTS

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

(a) the leasing of any Lot from time to time by the Owner thereof, subject, however, to all of the restrictions of this Declaration, provided that no Lot or the Improvements thereon shall be rented or leased for less than a one (1) month period of time

nor used for "transient vacation rental" purposes as that term is defined in Hawaii Revised Statutes Chapter 514E;
or

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

3.02 Maintenance of Lot. Each Lot, whether occupied or unoccupied, and any and all Improvements from time to time located thereon, shall at all times be maintained in good, clean and attractive condition and in such manner as to prevent such Lot and Improvements from becoming unsightly, unsanitary or a hazard to health. Without limiting the generality of the foregoing, each Owner shall, at the Owner's own expense (1) keep the Lot free from rubbish and litter; (2) restore and repair all damage and destruction caused by casualty to the Lot or any Improvement thereon; (3) maintain, cultivate and keep in good condition all shrubs, trees, grass, lawns, plantings and other landscaping originally located on or from time to time placed upon the Lot; (4) trim and restrain all trees, shrubs and plantings so that they shall not overhang or otherwise encroach upon, any walkway or Road, unless prior approval of the Association is obtained; (5) maintain in good condition and repair and preserve the finish of all fences located on or from time to time placed on the Lot; (6) maintain all paved surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter; and (7) maintain all slope areas upon the Lot. If not so maintained by the Lot Owner (the "defaulting Lot Owner"), Declarant, the Association, or any other Lot Owner may, upon thirty (30) days prior written Notice to the defaulting Lot Owner, maintain, restore or repair such Lot and such Improvements, the cost of which shall be reimbursed (together with interest thereon at the rate of one percent (1%) per month) by the defaulting Lot Owner. The Declarant, the Association, or any Lot Owner who maintains, restores, or repairs such Lot or Improvements for the defaulting Lot Owner shall have a lien against the defaulting Lot Owner's Lot to secure such reimbursement, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees and court costs. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. The foregoing remedy shall be in addition to any other remedies provided by law for the enforcement of such obligations. Neither Declarant nor the Association, nor any of their members, agents, employees or contractors shall be liable for any claim for damage which may result from any maintenance, restoration or repair work performed hereunder, provided that the Person against whom the claim is made has, upon the basis of such information as may be actually possessed by that Person, acted in good faith and without willful or intentional misconduct. The requirement of this Section shall not apply to any unimproved Lot during any period of time that the construction of Improvements on the Lot is occurring and for a period of one (1) year following the

publishing of a "Notice of Completion" for the Subdivision Improvements as provided in Chapter 507, Hawaii Revised Statutes, as amended.

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

(a) Directional signs established by Declarant or approved by the Association;

(b) Any signs that may be required by State statute, County ordinance, or legal proceeding;

(c) Identification signs of a combined total face area of one hundred forty-four (144) square inches or less for each Lot;

(d) During the time of construction of any Improvement, one job identification sign having a maximum face area of four (4) square feet;

(e) One "for sale" or "for rent" sign, having a maximum face area of four (4) square feet, which sign refers only to the premises on which it is situated;

(f) Signs, billboards and other advertising or directional devices or structures used by Declarant in connection with the development, subdivision, advertising, and sale of Lots; and

(g) Such other signs as may specifically be approved by the Association or Declarant.

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

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

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

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

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

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

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

trailer, mobile home, tent, temporary building, or partially completed building shall be used for human habitation.

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

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

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

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

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

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

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

3.18 No Hazardous Activities. No activities shall be conducted on any Lot and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any Person or

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

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

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

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

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

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

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