

prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith including reasonable attorneys' fees and court costs.

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

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

9.04 Subdivision and Consolidation.

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

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

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

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

9.07 Duration of Declaration. This Declaration and the covenants, conditions and restrictions contained herein, as amended from time to time, shall run with the land and shall be and remain in full force and effect for a term of twenty (20) years from the date of Recordation of this Declaration; after which time said Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, in writing signed by not less than seventy-five percent (75%) of the then Owners of Lots within the Kealakekua Bay Estates (based on one vote per Lot), has been Recorded at least one (1) year prior to the end of any such

period, agreeing to change or terminate this Declaration or said covenants, conditions, and restrictions in whole or in part.

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

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

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

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

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

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

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

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

or individuals; and

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

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

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

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

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

(b) Shall, by virtue of acceptance of any right, title or interest in the Kealakekua Bay Estates or in any Lot by an

Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with, and for the benefit of each and every other Owner; and

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

9.10 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage or other lien on any Lot taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Lot and listing the name or names of the Owner or Owners of fee simple title to the Lot and giving Notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce the holder of any such mortgage, or other lien, or title, or interest acquired by any purchaser upon foreclosure or any such mortgage or other lien (or upon conveyance in lieu of foreclosure) result in any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien (or conveyance in lieu of foreclosure), no such holder who thereby assumes title to a Lot shall be required to correct past violations hereof with respect to said Lot so long as said Lot is neither occupied nor used for any purpose by such holder but is merely held for prompt resale, and provided that all money obligations accruing pursuant to this Declaration subsequent to such foreclosure or such conveyance in lieu of foreclosure shall be paid by such holder. Any such purchaser on foreclosure or other purchaser or holder shall, however, take title subject to this Declaration.

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

9.12 Assignment of Property. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to any Person or Persons or to the Association. Any such

delegation, transfer, assignment, conveyance or release shall be effective upon the Recording by the Declarant of a Notice of such delegation, transfer, assignment, conveyance or release.

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

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

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

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

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

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

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

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

9.21 Condemnation of Common Area. If at any time, or from time to time, all or any portion of the common area or any interest therein be taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interest of all Owners.

9.22 Obligations of Owners, Avoidance, Termination.

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

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

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

T. RED CO., INC.
a Hawaii corporation

By Shinzo Nozaki
Shinzo Nozaki
Its Vice President

STATE OF HAWAII
COUNTY OF HAWAII

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SS.

On this 7th day of January, 1992, 2/1/92
before me appeared SHINZO NOZAKI, to me personally known, who being
by me duly sworn, did say that he is the Vice President of T.Red
Co., Inc., a Hawaii corporation, and that the seal affixed to the
foregoing instrument is the corporate seal of said corporation by
authority of its Board of Directors, and the said officer
acknowledged said instrument to be the free act and deed of said
corporation.



Janine K Rhodes
Notary Public, State of Hawaii
My commission expires 10-1-95