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R-892 STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL () PICK-UP (X)

Towne Development of Hawaii, Inc
220 South King Street, Ste 2170
Honolulu, HI 96813

Rs/1

TGA: P323793

(Total Document Pages =17)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ALII HEIGHTS SUBDIVISION, PHASE I**

THIS DECLARATION is made this 23rd day of January, **2003**, by **TOWNE KEAUHOU LLC**, a Hawaii limited liability company, whose address is 220 S. King Street, Suite 2170, Honolulu, Hawaii 96813, hereinafter referred to as the "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain real property situated at Pahoehoe 3rd and 4th, Laaloa 1st and 2nd and Kapalaalea 1st, North Kona, Island and County of Hawaii, State of Hawaii; and,

WHEREAS, Declarant has caused the real property to be subdivided into thirty-nine (39) residential lots; and

WHEREAS, Declarant desires that the real property be developed in a manner which, to the extent possible, will increase the economic value, desirability and attractiveness of the real property to its owners.

NOW THEREFORE, Declarant hereby declares that all of the real property subject to this Declaration shall at all times be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, all of which are established and declared for the purpose of increasing the economic value, desirability and attractiveness of the real property and for the mutual benefit of the owners thereof. The covenants, conditions and restrictions set forth in this Declaration shall run with the land, shall be binding upon all persons acquiring any right, title or interest in and to any part of the real property and shall benefit the Declarant and each person who becomes an owner of any part of the real property, and each successor in interest of such owner.

ARTICLE I DEFINITIONS

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

1.1 Declarant: "Declarant" means Towne Keauhou LLC, its successors and assigns, including any other person or persons who the Declarant may designate as having all or some of the powers and functions of the Declarant.

1.2 Declaration: "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Alii Heights Subdivision, as such Declaration may from time to time be amended.

1.3 Design Review Committee: "Design Review Committee" means a committee whose purpose is to review plans for improvements to any lot so as to insure compliance with the design rules and other applicable requirements of this Declaration. Until relinquished by the Declarant or until the last lot is sold, whichever first occurs, the Design Review Committee shall consist solely of the Declarant or the Declarant's nominee. Thereafter, the Design Review Committee shall consist of three persons elected by not less than fifty percent (50%) of those owners of lots within Alii Heights Subdivision (based on one vote per lot) who attend a meeting of lot owners called for such purpose. The persons initially elected to the Design Review Committee to succeed the Declarant shall be elected for staggered terms of three, two and one year. As the terms of such persons expire, their successors shall be elected for terms of three years.

1.4 Excavation: "Excavation" means any disturbance of the surface of a lot (except temporarily for planting) which results in the removal of earth or rock to a depth of more than eighteen (18) inches.

1.5 Fill: "Fill" means any addition of rock or earth materials to the surface of a lot which increases the previous elevation of such surface by more than six (6") inches.

1.6 Garage: "Garage" means an enclosed building or wing of a building in which to park vehicles, fitted with a door or doors through which the vehicles may enter and exit the building or wing.

1.7 Alii Heights Subdivision: "Alii Heights Subdivision" means the subdivision of the real property as shown on the final subdivision maps approved by the County of Hawaii on May 10, 2002 as Final Subdivision Approval No. 7546, together with the subdivision of any other real property from time to time annexed thereto in the manner provided herein, and includes all improvements now or hereafter located on the real property.

1.8 House: "House" means a building or buildings used for residential purposes by a single family, together with any garage or similar outbuilding appurtenant thereto whether or not a part of the same building.

1.9 Improvement: "Improvement" means any building, outbuilding, road, driveway, parking area, fence, retaining wall, stair, deck, hedge, windbreak, pole, sign and any other structure of any type or kind.

1.10 Lot: "Lot" means one of the non-roadway parcels designated on the approved final subdivision maps for Alii Heights Subdivision, together with any other non-roadway parcel designated on an approved final subdivision map or maps for real property annexed in the future to Alii Heights Subdivision in the manner provided herein. Unless the context indicates otherwise, lot also includes all improvements thereon.

1.11 Owner: "Owner" means, with respect to a lot, the person or persons holding:

- (a) recorded fee simple legal title to the lot;
- (b) recorded fee simple equitable title to the lot under a contract for the purchase of the lot; or
- (c) a recorded lease to the lot for a term of not less than thirty (30) years.

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

1.13 Real Property: "Real Property" means all of the land described in Exhibit "A" attached hereto and incorporated herein.

1.14 Record: "Record", "Recorded" and "Recordation" means, with respect to any document, the recordation or filing of the document in the Bureau of Conveyance of the State of Hawaii.

1.15 Road: "Road" means the paved vehicular way located within or upon the portion of the real property designated as R-1 and R-2 as shown on File Plan 2326.

1.16 Single Family: "Single Family" means an individual or two or more persons related by blood, state sanctioned adoption, foster parentage, guardianship or marriage, or a group of not more than five unrelated persons (excluding servants), occupying a dwelling unit. The term includes individuals in larger group living situations described as group living facilities and family child care homes. The above term shall comport with the definition of "Family" in the Hawaii County Code Section 25-1-5(b)(43), as the same may be amended from time to time.

1.17 Visible From the Road: "Visible from the road" or similar phrase means, with respect to any object or activity on a given lot, that such object or activity on the lot is visible from a point six feet above any portion of the road located on the lot.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Property: The real property initially subject to this Declaration is the real property described in Exhibit "A", and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to this Declaration. This real property, together with such other real property from time to time annexed thereto and made subject to this Declaration pursuant to section 2.2, shall constitute Alii Heights Subdivision.

2.2 Annexation:

(a) The Declarant reserves the right, at any time prior to thirty (30) years from the date of this Declaration, pursuant to the following provisions of this section and without the consent of any Owner, or any other person or corporation or entity holding an interest in any Lot, from time to time and in its sole discretion, to annex to Alii Heights Subdivision all or any part of adjacent real property (not then constituting a part of Alii Heights Subdivision) situated at Pahoehoe 3rd and 4th, Laaloa 1st and 2nd and Kapalaalea 1st, North Kona, Island and County of Hawaii, State of Hawaii.

(b) The annexation of such real property shall become effective when and only when the last of each of the following events occurs:

(1) The Declarant has recorded a declaration, which may consist of more than one document and which shall, among other things: (i) describe the real property which is to be annexed to Alii Heights Subdivision (the "annexed real property"), (ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions applicable to the annexed real property as provided in subsection 2.2(d), and (iii) declare that the annexed real property is held and shall be held, sold, conveyed, encumbered, leased, occupied, and improved subject to this Declaration; and

(2) The County of Hawaii has approved a final subdivision map of the annexed real property.

Alii Heights CC & Rs 1/17/02

(c) Upon the annexation becoming effective, the annexed real property shall become and constitute a part of Alii Heights Subdivision.

(d) Any provision herein to the contrary notwithstanding, the declaration referred to in subsection 2.2(b) may, with respect to all or any part of the annexed real property, provide for any or all of the following:

(1) Such new land classifications not provided for in this Declaration and such limitations, restrictions, covenants and conditions with respect to the use thereof as the Declarant may deem to be appropriate for the annexed real property.

(2) With respect to the land classifications provided for in this Declaration, such additional or different limitations, restrictions, covenants and conditions with respect to the use thereof as the Declarant may deem to be appropriate for the annexed real property.

(3) A declaration of limitations, restrictions, covenants and conditions applicable exclusively to a specified area of the annexed real property.

(e) The annexed real property shall be subject to this Declaration and the declaration referred to in subsection 2.2(b).

(f) No real property, except the real property described in Exhibit "A" to this Declaration and any real property annexed as provided herein, shall be deemed subject to this Declaration, whether or not shown on any subdivision map or described or referred to in any document executed or recorded by the Declarant. Nothing herein contained or in any amendment hereto, or in any subdivision map, picture, drawing, brochure or other representation of a scheme of development, shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject (or be construed as requiring the Declarant to commit or subject) to this Declaration any real property other than that described in Exhibit "A" to this Declaration.

ARTICLE III RESTRICTIVE COVENANTS

3.1 Use of Lot: Each lot shall be used for single family residential purposes only. Other than by Declarant, no lot may be subdivided. The use of each lot, and the activities conducted thereon, shall comply with all applicable laws and regulations. The rental or lease of any lot, or the improvements thereon, for a period of less than thirty days shall not be permitted.

3.2 Grading of Lots: Grading, excavation or bull-dozing of a lot shall be done in such a manner so as not to create excessive dust or erosion of soil on any other lot. All areas cleared must be wetted during grading and replanted with appropriate ground cover and/or trees within ninety (90) days of completion of such work. No grading or any other improvement on a lot shall be permitted if the grading

or improvement creates, contributes to or causes a flooding or erosion problem on another lot or interferes with the natural flow of water onto another lot.

3.3 Maintenance of Lot: The initial owner of every lot shall, within six months of acquiring title to the lot, cause the lot and the planter strip (if any) between the sidewalk (if any) and roadway fronting the lot to be fully landscaped. No plant, shrub or other landscaping within the planter strip (if any) shall exceed 15" in height. Every lot, whether occupied or unoccupied, and all improvements thereon (including landscaping), shall be maintained by the owner of the lot, at the owner's sole cost and expense, in good and clean condition and repair, free of trash and rubbish, and in such manner so as not to create a fire, safety, drainage or health hazard to any other lot or the improvements thereon or to any part of the real property. No dumping shall be allowed on or around any lot at any time.

3.4 Signs: No sign or billboard of any kind whatsoever shall be placed or displayed upon any lot except for:

(a) A sign that may be required by or pursuant to law, regulation or a legal proceeding;

(b) Residential identification signs of a combined total face area of two (2) square feet or less;

(c) During the time of construction of any residence or other improvement, job identification signs of a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen;

(d) Not more than one "For Sale" or "For Rent" sign, of a maximum face area of three square feet, such sign to refer only to the lot on which it is situated.

3.5 Trucks and Vehicles: No truck of more than one ton capacity shall be parked, kept, placed or maintained upon any lot in such a manner that the truck is visible from any other lot; no boat, recreational vehicle, motorcycle, trailer, construction equipment or other vehicle shall be parked, kept, placed or maintained upon any lot in such a manner that the boat, recreational vehicle, motorcycle, trailer, construction equipment or other vehicle is visible from any other lot; provided however, that the provisions of this paragraph shall not apply to construction equipment used exclusively in connection with the construction of any improvement to the lot.

3.6 Accessory Structures: Accessory structures or buildings including but not limited to garages, household pet shelters, green houses, swimming pools, bath houses and hobby/craft shops shall be allowed to be constructed on a lot, provided that the structure or building complies with all applicable laws and regulations and this Declaration. No accessory structure or building shall be constructed on a lot prior to the construction of a house without the prior written consent of the Design Review Committee.

3.7 Repair of Vehicles: No automobile, truck, boat, recreational vehicle, motorcycle, trailer, construction equipment or machinery shall be constructed,

reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from the road, provided that nothing in this section shall prevent an owner from performing maintenance work and minor repairs on the owner's automobile, truck, boat, recreational vehicle, motorcycle, trailer, construction equipment or machinery in the owner's garage. No scrap, junk or inoperative automobile, truck, boat, recreational vehicle, motorcycle, trailer, construction equipment or machinery shall be parked, kept, placed or stored on any lot.

3.8 Refuse Disposal: No garbage or trash shall be permitted on any lot except in closed receptacles placed or screened in such a manner so as not to be visible from any other lot. No accumulation of waste plant material shall be permitted on any lot, except as part of an established compost pile placed or screened in such a manner as not to be visible from any other lot.

3.9 Towers, Antennas and other Facilities: Towers, antennas, aerials and other facilities for reception or transmission of radio or television broadcasts or other means of communication shall not be erected or maintained on any lot, provided that this section shall not prevent the installation and use of satellite dishes not exceeding twenty-four inches in diameter. All utility transmission lines, including without limitation electrical, telephone, cable TV and water transmission lines, shall be installed underground. A solar water heating device and appurtenances may be installed on the roof of a building or structure, provided that the surfaces of such device and appurtenances are non-reflective and non-glaring.

3.10 Parking: No long term storage of vehicles, trailers, boats or mobile homes shall be allowed on any lot without the prior written consent of the Design Review Committee, unless such vehicles, trailers, boats or mobile homes are stored in a garage.

3.11 Trailers, outbuildings and Temporary Structures: No trailer, mobile home, recreational vehicle, tent, shack, detached garage, temporary structure or other outbuilding erected upon a lot shall at any time be used or occupied as a residence, except upon the prior written consent of the Design Review Committee.

3.12 Visibility of Clothes lines, Tanks and Materials: No clothes lines or fuel storage tanks shall be placed on a lot in a location visible from any other lot, unless the clothes line or fuel storage tank is screened from the view of all other lots. No lumber, metal or bulk materials or inoperable vehicles shall be kept or stored except in a garage or other building.

3.13 Animals: Except for dogs, cats and other common household pets, in reasonable number, no animals of any kind shall be raised, bred or kept on any lot. A permitted animal shall be kept and contained within a lot by means of an adequate enclosure and shelter meeting the design requirements of this Declaration.

3.14 Trees/Shrubs: Trees, shrubs, bushes, hedges and all other plants on every lot shall be maintained at a reasonable height so as not to interfere with the viewplanes available to any other lot.

3.15 Hazardous Activity: No activity shall be conducted on any lot, and no improvement shall be constructed on any lot, which is or might be unsafe or hazardous to any person or property. Without limitation, no firearm shall be discharged on any lot, pesticides, herbicides and other toxic substances as defined by any federal, state or local law shall be used in compliance with all laws and regulations governing the use of such toxic substances. No lot owner shall permit or allow any underground, surface or airborne runoff or drift of such toxic substances to occur over, under or onto any other lot.

3.16 Sound Devices and Noise: No exterior speakers, horns, whistles, bells or other sound devices, except sound devices used to provide security for a lot or improvement thereon, shall be placed upon any lot. No unreasonably loud or annoying sound, including but not limited to unreasonably loud or annoying barking, howling or growling by a permitted animal, shall be emitted from any lot. The Design Review Committee may establish a noise standard, the violation of which will constitute a violation of this section.

3.17 Burning: No paper, vegetation or any other material may be burned on any lot, except in an incinerator or other equipment designed for the disposal of such materials; provided that this provision shall not prohibit barbeque cooking.

3.18 Air Conditioning Units: No air conditioning units or compressors shall be placed or mounted in the front yard of any lot or front building face of any house constructed thereon. All air conditioning units shall be kept in good working condition so that excessive noise shall be kept to a minimum.

ARTICLE IV DESIGN APPROVAL

4.1 Design Review Committee Approval Required: The right of an owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above the owner's lot or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or to install any utility transmission line (wire, conduit or pipe) thereon or thereover, shall be subject to all of the restrictions, limitations and conditions of this Declaration. The Design Review Committee's approval shall be required for all improvements, except as may otherwise be provided in this Declaration.

4.2 Design Review Committee Duties: It shall be the duty of the Design Review Committee to consider and act upon plans and specifications for proposed improvements from time to time submitted to it and to perform such other duties set forth in this Declaration.

4.3 Design Review Committee Meetings/Action: The Design Review Committee shall meet as necessary to properly perform its duties. The vote or written consent of any two members shall constitute the act of the Design Review Committee, unless the unanimous action of its members is otherwise required by this Declaration. The Design Review Committee shall keep and maintain a record of all actions taken.

4.4 Design Review Committee Rules: The Design Review Committee may, in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design Review Committee Rules" which, among other things, interpret or implement the provisions of this Declaration pertaining to the design of improvements. A copy of the Design Review Committee Rules, as they may from time to time be adopted, amended or repealed, certified by a member of the Design Review Committee, shall be made available for inspection and copying by any owner.

4.5 Procedures for Approval of Plans: Any construction, reconstruction, refinishing or alteration of any part of the exterior of any improvement on any lot is prohibited until and unless the owner of the lot first obtains written approval therefor from the Design Review Committee and otherwise complies with all of the provisions of this Declaration. Any owner proposing to construct, reconstruct, refinish or alter any part of the exterior of any improvement shall apply for approval thereof by submitting to the Design Review Committee the plans and specifications for the proposed improvement. The plans and specifications shall include, as applicable, floor, elevation, plot, landscape and grading plans and specifications for the principal exterior materials, color schemes and vehicle parking. Within thirty (30) days from the date of receipt of any plans and specifications, the Design Review Committee shall notify the person submitting the plans and specifications, in writing, that they are either approved or disapproved. If the plans and specifications are disapproved, the Design Review Committee's notice shall specify the reasons for disapproval. Any plans and specifications for which timely notice of disapproval is not given, shall be deemed to be approved by the Design Review Committee.

4.6 Approval/Inspection Fees: The Design Review Committee shall have the right to assess and collect from owners submitting plans and specifications to the Committee such fees and assessments as it shall deem appropriate with respect to the review and approval of the plans and specifications submitted to the Committee and the inspection and approval of the construction in accordance therewith. Unless and until revised by the Design Review Committee, a fee of \$100.00 shall be charged for the review and approval of plans and specifications for a house and the inspection and approval of construction in accordance therewith.

4.7 Improvements not Requiring Approval: Nothing contained in this Declaration shall be deemed: (a) to require the Declarant to obtain approval from the Design Review Committee for the construction, reconstruction, refinishing, alteration or maintenance of any improvement constructed by the Declarant, (b) to require an Owner to obtain approval from the Design Review Committee for the construction, reconstruction, refinishing, alteration or maintenance or of the interior of any improvement, or (c) to require an Owner to obtain approval from the Design Review Committee when reconstructing, refinishing or maintaining an improvement in accordance with plans and specifications previously approved by the Design Review Committee.

4.8 Extension of Garage: A garage previously approved by the Design Review Committee may be extended or enlarged by no greater an area than required for

one additional parking space without the approval of the Design Review Committee, provided that such extension or enlargement shall be in accordance with the plans and specifications for the garage previously approved by the Design Review Committee.

4.9 Standards for Review of Plans: In reviewing plans and specifications, the Design Review Committee shall apply all of the requirements and restrictions set forth in this Declaration and shall also consider whether the proposed improvement:

(a) Is of a design that is compatible and in harmony with existing improvements of the same type in Alii Heights Subdivision; and

(b) Is comparable in quality, materials and workmanship to existing improvements of the same type in Alii Heights Subdivision.

4.10 Prosecution of Work After Approval: After approval by the Design Review Committee of any plans and specifications, the improvements described in the plans and specifications shall be undertaken and completed as promptly and diligently as possible and in complete conformity with the plans or specifications. All construction, alteration or other work shall be completed within twelve (12) months after the date of approval, or within such other time as the Design Review Committee shall allow.

ARTICLE V DESIGN RULES

5.1 Number of Houses, Height, Guest Houses: Notwithstanding any provision to the contrary contained in this Declaration and under applicable law and regulations, a maximum of one (1) single-family residential dwelling may be constructed on any lot. The highest point of a house or other structure on any lot shall not be greater than 24'6" above the lowest point of the finished grade of the building pad portion of the lot; provided, however, that the highest point of a house or other structure on all downsloped lots shall not be greater than 28'6" above the highest point of the building pad portion of the lot. For purposes of this section, a downsloped lot shall be defined as a lot on which the building pad portion of the lot is six (6) feet lower than the average grade of the roadway directly adjacent to the lot. A guest house or like facility, visually attached to a house by means of a wall or fence not less than six (6) feet in height, or a covered walkway, shall be allowed and be deemed to be a part of the house to which it is visually attached. The guest house shall not exceed 500 square feet in floor area, shall not be more than one story in height and shall not have any kitchen facilities.

5.2 Exterior Surfaces: All buildings and structures shall have exterior walls of masonry, stucco or wood. Vinyl siding, metal siding and uncovered hollow-tile blocks shall not be permitted as an exterior surface on any building or structure. The finish on all exterior surfaces on all buildings and structures shall be in earth-tone colors and shall be non-reflective and non-glaring.

5.3 Roofs: No building or structure shall have a roof of corrugated metal, nor shall any reflective or glaring material be used as roofing for any building or

structure. Acceptable roofing materials include but are not limited to asphalt shingles, clay, ceramic and precast concrete tiles and non-reflective metal (other than corrugated metal). No building or structure shall have a roof with a pitch less than 5/12 (5" of rise per 12" of run).

5.4 Elevated Structure: Any building or structure with all or a portion of its floor elevated above grade shall be designed and constructed with all foundation members and mechanical and electrical components between the grade and the elevated floor completely enclosed. All foundation members and mechanical and electrical components between the grade and the elevated floor shall be concealed by the same material used for the exterior walls of the building or structure or by such other material approved by the Design Review Committee.

5.5 Construction Within Setback Area: No building or structure shall be constructed or located upon or over any portion of a lot designated as a setback area; provided that walks, fences, walls, driveways and garbage receptacle enclosures may be so constructed or located if not in violation of any restrictions in this Declaration, applicable law or regulation.

5.6 Fences and Walls: Fences and walls shall be designed so as to be compatible and in harmony with the design of all other improvements on the lot and shall be subject to the approval as to materials, color and height by the Design Review Committee. Fences and walls on every lot shall be constructed at a reasonable height so as not to interfere with the viewplanes available to any other lot.

5.7 Used Materials; Relocation of Buildings: No used or second hand lumber shall be incorporated in the construction of any building erected upon any lot, nor shall any building be placed or re-erected upon any lot which was previously erected in another location. No "Quonset" type building shall be placed upon any lot.

5.8 Size of House: The main house constructed on every lot shall have an interior living area under roof of not less than 1,350 square feet, exclusive of lanais, porches, patios, garages, exterior stairways and landings.

5.9 Garage Requirements: Every house shall have a garage with not less than two parking stalls.

5.10 Materials: All materials used for or incorporated in the construction of all improvements shall be approved by the Design Review Committee.

5.11 Driveways: All driveways between the road and the garage or garages on every lot shall be paved or constructed with concrete or asphalt.

5.12 Exterior Colors: All exterior colors used on the houses subject to this Declaration shall be earth tones.

ARTICLE VI GENERAL PROVISIONS

6.1 Presumption of Compliance: All of the following improvements, excavation, fill and other work shall be conclusively presumed to be in compliance with this Declaration.

(a) Those existing or maintained within or upon a lot as of the date of this Declaration.

(b) Those existing or maintained within or upon a lot as of the date the lot is conveyed by the Declarant to an owner.

(c) Those, from time to time constructed, reconstructed, refinished, altered, installed or maintained by the Declarant within or upon any of the real property.

6.2 Release of Lots Owned by Declarant: The Declarant shall have the power to release any lot or other area of the real property owned by the Declarant, temporarily or forever, from any or all of the requirements and restrictions set forth in this Declaration.

6.3 Governmental Entities and Public Utilities: The requirements and restrictions set forth in this Declaration shall not apply to any lot or other area of the real property while and so long as the same is owned, leased or otherwise acquired by any governmental entity or public utility and used for public or utility purposes, but only if and to the extent that such requirements and restrictions prevent the reasonable use of such lot or other area of the real property for such purposes. All requirements and restrictions not so preventing reasonable use shall apply to governmental entities and public utilities, including without limitation, the requirements regarding approval by the Design Review Committee of improvements. On cessation of such public or utility use, the requirements and restrictions set forth in this Declaration shall become applicable again in their entirety to such lot or other area of the real property.

6.4 Limited Liability: The Declarant, its members, officers, directors, employees and agents, shall not be liable to any owner or to any other person for any damage or loss claimed or suffered by such owner or person arising from or on account of any act, omission, error or negligence of the Declarant, its officers, directors, employees and agents, with respect to (a) the approval or disapproval of any plans or specifications for any improvement on any lot, (b) the construction of, or performance of any work on, any improvement on any lot, (c) the development or manner of development of any improvement on any lot, or (d) the enforcement or lack of enforcement of any of the requirements or restrictions set forth in this Declaration.

6.5 Enforcement of Declaration:

(a) The Declarant and every owner shall have the right to seek the enforcement of the requirements, restrictions and other provisions set forth in this Declaration by bringing a legal proceeding for injunctive relief and/or monetary damages.

(b) If a legal proceeding is brought to enforce the requirements, restrictions and other provisions set forth in this Declaration, or any of them, the prevailing party or parties shall be entitled to have and recover from the losing party or parties reasonable attorneys fees and costs of suit.

6.6 Failure to Enforce Provisions: The failure in any case to enforce any requirement, restriction or other provision set forth in this Declaration shall not constitute a waiver of any right to enforce any such requirement, restriction or other provision or any other provisions of this Declaration in another case against or with respect to the same owner or lot or any other owner or lot.

6.7 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.

6.8 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.

6.9 Notices: Any notice, information, or other document required to be given by this Declaration may be delivered either personally or my mail. If delivery is to be made by mail, notice shall be deemed to have been delivered seventy two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the party at its last known address.

6.10 Notice with Multiple Owners: Where there is more than one owner of a lot, delivery either personally or by mail to any owner shall be effective delivery to all owners of such lot.

6.11 Effect of Provisions of Declaration: Each deed, mortgage, agreement of sale, lease, or other conveyance made or delivered by any legal or equitable owner of any Lot, or interest therein, shall be subject to the covenants, conditions and restrictions contained in this Declaration, whether or not expressly contained in such deed, mortgage, agreement of sale, lease or other conveyance. Every such conveyance shall contain the following provision:

“Subject, however, to each and all of the covenants, conditions and restrictions contained in that certain Declaration of Covenants, Conditions and Restrictions, dated and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____.”

6.12 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 remain in full force and effect for a term of thirty (30) years from the date this Declaration is recorded, 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 owners of lots within Alii Heights Subdivision (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 the covenants, conditions, and restrictions in whole or in part.

6.13 Amendment: Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto, by the recording of a written instrument or instruments specifying the amendment or change, signed by not less than seventy five percent (75%) of the then owners of lots within Alii Heights Subdivision (based on one vote per Lot). Notwithstanding the foregoing, any provisions contained in this Declaration may be amended or changed, or additional provisions may be added thereto by Declarant in its sole discretion at any time prior to the closing of the last sale of a lot. Such amendment or change by Declarant shall be made effective by recording a written instrument specifying the amendment or change and signed by the Declarant.

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

TOWNE KEAUKOU LLC,
a Hawaii limited liability company

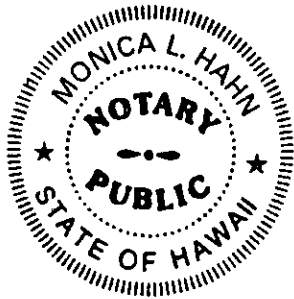
By: TOWNE DEVELOPMENT OF KONA, INC.,
a Hawaii corporation
Its Member

By: 

CHRISTOPHER L. LAU
Its President

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 23rd day of January, 2003, before me personally appeared CHRISTOPHER L. LAU, to me known (or who has proven to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, who, being duly sworn, did say that he is the President of TOWNE DEVELOPMENT OF KONA, INC., a Hawaii corporation, the member of TOWNE KEAUHOU LLC, a Hawaii limited liability company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and in behalf of said limited liability company, and that said officer acknowledged said instrument to be the free act and deed of said corporation, as such member of said limited liability company.



Monica L. Hahn

Monica L. Hahn

Notary Public, State of Hawaii

My commission expires: 11/12/05

EXHIBIT "A"

All of that certain parcel of land situate on the westerly side of Kuakini Highway (F.A.P. No. S-229 (1)) and on the easterly side of Keauhou View Estates, Unit 1, Phase IV (File Plan 2276), Keauhou View Estates, Unit 1, Phase V (File Plan 2304) and Keauhou View Estates, Unit 1, Phase VI (File Plan 2316) at Pahoehoe 3rd, Pahoehoe 4th, Laaloa 1st, Laaloa 2nd and Kapalaalaea 1st, North Kona, Island of Hawaii, State of Hawaii, being portions of Grant 1748 to Kapahu, Grant 1749 to Kipapa, Grant 1751 to Kahanale, Grant 1757 to Kanewa, Grant 1869 to Kekamakahi, L.C. Aw. 4452, Apana 2 to H. Kalama and L.C. Aw. 7716, Apana 4 to R. Keelikolani being the "ALI'I HEIGHTS, UNIT 1, PHASE 1" subdivision, as shown on File Plan Number 2326, filed in the Bureau of Conveyances of the State of Hawaii, and being particularly described as follows:

LOT	AREA
1	31,173 square feet,
2	16,744 square feet,
3	18,374 square feet,
4	19,412 square feet,
5	15,002 square feet,
6	15,002 square feet,
7	19,224 square feet,
8	19,552 square feet,
9	19,552 square feet,
10	19,563 square feet,
11	19,928 square feet,
12	16,102 square feet,
13	16,080 square feet,
14	16,080 square feet,
15	16,080 square feet,
16	15,946 square feet,
17	15,616 square feet,
18	15,750 square feet,
19	16,273 square feet,
20	16,803 square feet,
21	28,475 square feet,
22	31,681 square feet,
23	15,524 square feet,
24	15,493 square feet,
25	15,806 square feet,
26	15,619 square feet,
27	15,293 square feet,
28	26,091 square feet,
29	33,794 square feet,

EXHIBIT "A" CONTINUED

30	35,362 square feet,
31	19,081 square feet,
32	15,078 square feet,
33	15,292 square feet,
34	15,035 square feet,
35	15,289 square feet,
36	15,025 square feet,
37	16,049 square feet,
38	15,335 square feet,
39	29,505 square feet,
40	18.208 acres,
41	71.135 acres,
R-1	2.750 acres,
R-2	40,046 square feet, and
R-3	5.516 acres, more or less.

Together with a non-exclusive easement for access purposes in common with all others entitled thereto, in, over, across and under Roadway Lot 26 of "Keauhou View Estates Subdivision, Unit 1, Phase IV" as shown on File Plan No. 2276, PROVIDED, HOWEVER, that if and when in the event said Roadway Lot 26 is conveyed, transferred and dedicated to any governmental authority and accepted as public highway or road, said easement as to the lot so conveyed shall automatically cease and terminate.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : TOWNE-KONA LIMITED PARTNERSHIP, a Hawaii Limited Partnership

GRANTEE : TOWNE KEAUHOU LLC, a limited liability company

DATED : June 21, 1999

RECORDED : Document No. 99-110265