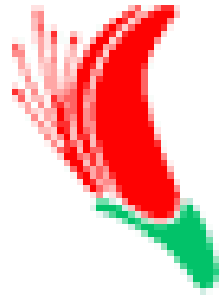


**Waikoloa Village**



**Association**

**Declaration of  
Protective Covenants**



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## DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made on May 27, 1971, by BOISE CASCADE HOME & LAND CORPORATION, a Delaware corporation, ("Declarant"), and FIRST HAWAIIAN BANK, a Hawaiian banking institution ("Trustee").

### R E C I T A L S

Declarant is the developer and beneficial owner of the real property located in the County and State of Hawaii, known as Waikoloa Village (the "Development"), described in the supplemental Declaration attached hereto as Exhibit A and made a part hereof.

Trustee holds legal title to said real property pursuant to the provisions of that certain unrecorded Trust Agreement dated December 12, 1968 by and among Trustee (then known as First National Bank of Hawaii), Declarant and Richard P. Smart.

Declarant is about to sell and convey the lots and parcels situated within the Development and desires to impose upon them mutual and beneficial restrictions, covenants, conditions, equitable servitude and charges under a general plan or scheme of improvement for the benefit of all of the lots in the Development.

NOW, THEREFORE, Declarant declares that all of the lots and parcels located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following declarations, 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 the Development as a whole and each of said lots and parcels situated therein. All of the provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels therein, to create reciprocal rights between the respective owners of all of said lots and parcels. All of such provisions shall, as to the owner of each such lot or parcel, his heirs, successors and assigns operate as covenants running with the land for the benefit of each and all other lots and parcels in the Development and their respective owners.

1. DEFINITIONS. The following terms as used in this Declaration are defined as follows:

- A. "Association" shall mean Waikoloa Village Association, a non-profit corporation.
- B. "Board" means the Board of Directors of the Association.
- C. "Committee" means the Environmental Control Committee.
- D. "Common Area" means all of the real property designated as such in the Supplemental Declaration and all real property acquired by the Association, whether acquired from Declarant or otherwise, together, in each instance, with all improvements which may be constructed thereon, including, but not limited to recreational and community facilities, lakes, parks and streets, but excepting and excluding all easements, rights and interests set forth herein or in the Supplemental Declaration, or reserved or imposed at the time of acquisition by the Association, together with all improvements made in connection therewith.

- E. "Declarant" means Boise Cascade Home & Land Corporation and its successors and assigns as the developer of the Development.
- F. "Declaration" means this Declaration of Protective Covenants and any amendments hereto.
- G. "Development" means all that real property situate in the County and State of Hawaii, described in the Supplemental Declaration and all other real property which may be annexed thereto as provided herein.
- H. "Improvements" means all buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls and other walls, hedges, poles, antennae, and any other structures of any type or kind.
- I. "Lot" means any lot as designated on the Plat, or any apartment or living unit in a multi-family dwelling. Land owned in common as part of a multi-family dwelling shall be deemed a part of each apartment or living unit situated on it and the Owner of each such apartment or living unit shall be responsible therefor as if sole owner for the purposes of this declaration when such apartment or living unit has been constructed and sold or rented to one other than the developer thereof. A "Residential Lot" is any Lot so designated in a Supplemental Declaration.
- J. "Member" means the Owner of a Residential Lot, who shall be a member of the Association.
- K. "Multi-family Dwelling" means a residential dwelling containing two or more living units.
- L. "Owner" means:
  - (i) any person, including Declarant, who holds fee simple title to a Lot, except that Declarant shall be deemed Owner of a Lot, title to which is held by Trustee; or

(ii) any person who has contracted to purchase fee title to Lot under a written agreement, in which case the seller under said agreement (including Declarant if Trustee is the seller) shall cease to be the Owner while said agreement is in effect; or

(iii) a lessee of a Lot under a recorded lease from the Owner of fee title to said Lot for a term of not less than 50 years, in which case the lessor under said lease shall cease to be the Owner while said lease is in effect.

M. "Plat" means the recorded File Plans for the Development which show the Lots and Common Areas.

N. "Single-family Dwelling" means a residential dwelling for one or more persons, each related to the 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, maintaining a common household in such dwelling.

O. "Supplemental Declaration" means:

(i) The recorded Supplemental Declaration of Declarant attached hereto as Exhibit A; or

(ii) In the case of real property being annexed to the Development, the recorded Supplemental Declaration of Declarant which incorporates the provisions of this Declaration therein by reference. In either event, the Supplemental Declaration shall include a description of the real property in the Development subject to the provisions of this Declaration and shall designate the permitted uses of such property.

2. GENERAL APPLICATION - RESIDENTIAL. The following apply to any Lot designated in a Supplemental Declaration as residential:
- A. Accessory Outbuildings. No garage, or shed shall be built before a dwelling is built on the Lot. No garage, shed, temporary building, or partially completed building shall be used for human habitation.
  - B. Completion of Construction. Every Improvement, once begun, shall be completed within nine (9) months. Improvements not completed within nine (9) months, Improvements on which construction is interrupted for ninety (90) days, and Improvements partially or totally destroyed and not rebuilt within nine (9) months shall be deemed a nuisance. The time for completion of any construction, repair or rebuilding shall be extended for a period equal to any delay from causes beyond the reasonable control of the owner. Declarant or Trustee may remove any such nuisance or repair or complete the same, at the cost of the Owner.
  - C. Prohibition Against Used Buildings. No used buildings shall be placed on any Lot.
  - D. Maintenance of Lots. Each Lot, whether occupied or unoccupied, and any Improvements placed thereon, shall at all times be maintained in good and clean condition and in such a manner as to prevent it from becoming unsightly, unsanitary or a hazard to health. If not so maintained, Declarant or Trustee or the Association may maintain, restore or repair such Lot, the cost of which shall be added to and become a part of the annual charge to which such Lot is subject. Neither Declarant, Trustee, the Association or any of their agents or employees or contractors shall be liable for any damage which may result from any maintenance, restoration or repair work performed hereunder, unless caused by gross negligence or willful misconduct.<sup>1</sup>

- E. Disposal of Sanitary Waste. No outside toilet shall be constructed on any Lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank, cesspool or other sewage system approved by the appropriate governmental authorities.
- F. Golf Course Lots. Owners of Lots adjacent to golf course fairways shall permit entrance upon their Lots for purposes of retrieval of golf balls.
- G. Nuisance. No noxious or offensive activities or nuisances shall be suffered on any Lot
- H. Signs. Professionally prepared signs of customary and reasonable dimension may be displayed on any Lot advertising it, together with any improvements located thereon, or advertising model homes for sale or lease. All other signs, billboards, or advertising structures of any kind are prohibited except upon application to and written permission from the Committee
- I. Animals. No animals shall be kept on any Lot except usual household pets, except that the Owner of a Lot with a total area exceeding 3 acres may pasture horses and cows. Household pets shall be kept reasonably confined so as not to become a nuisance.
- J. Vehicle Parking. No boat, trailer, truck or truck camper will be habitually parked on any street or kept on a Lot except in a garage or carport or in a location not visible from the adjacent street, except that the requirements of this paragraph may be waived or modified by the Committee in the case of Lots which present difficult access problems.
- K. Garbage and Refuse Disposal. Without a permit from the Committee, no Owner shall burn or permit the burning out-of-doors of garbage, trash or other household refuse, nor shall any Owner accumulate on his Lot any junked or inoperable vehicle or litter, refuse or garbage, except in receptacles provided for such purposes.

- L. Concealment of Utilities, Fuel Storage Tanks and Trash Receptacles. All utilities within the boundaries of any Lot shall be placed underground and every fuel storage tank of any Lot shall be either buried below ground or screened to the satisfaction of the Committee. Every receptacle for rubbish shall be underground or shall be so placed and kept as not to be visible from any street within the Development.
- M. Restrictions on Temporary Structures. No travel trailer or tent shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.
- N. Removal of Trees. No tree over 3 inches in diameter may be cut down without the prior written consent of the Committee.
- O. Television or Radio Antennae and Towers and Laundry Drying Facilities. No television or radio antennae or tower shall be erected or used outdoors on any Lot, whether attached to a building or structure or otherwise without Committee approval. No laundry drying equipment shall be so located as to be visible from the adjacent street unless first approved in writing by the Committee.
- P. Ditches and Swales. Each Owner shall keep drainage ditches and swales located on his Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required by reason of the Owner's construction of Improvements, including driveways, on his Lot.
- Q. Resubdivision or Joinder of Lots. No Lot designated for Single-family Residential use in a Supplemental Declaration shall be subdivided. Density of dwelling units or condominium apartments on Lots designated for Multifamily use in a Supplemental Declaration shall not exceed the density permitted by law. If the Owner of two or more contiguous Lots uses said Lots as the site of a Single-family Dwelling, said Lots shall be treated as a single Lot

for purposes of this Declaration so long as said Lots remain improved with one Single-family Dwelling.

- R. Drilling and Mining. No drilling, refining, quarrying or mining operation of any kind shall be permitted on any Lot.
- S. Single-family Residential. No improvement except a Single-family Dwelling and such outbuildings as are usually accessory thereto shall be constructed, placed or permitted to remain on any Lot designated for Single-family Residential use in a Supplemental Declaration. The following restrictions shall apply specifically to such Lots:
  - (i) Minimum Area. Each dwelling constructed shall have fully enclosed floor area(exclusive of roofed or unroofed porches, terraces, garages, carports or other outbuildings) not less than 1,000 square feet and shall also have, as an accessory thereto, a double carport or garage, unless otherwise permitted by the Committee or Declarant because of terrain problems. 2
  - (ii) Single-story Construction. Each such dwelling shall be single-story, unless split-level or two-story construction is approved by the Committee.
  - (iii) Set Backs. Every dwelling shall be at least 25 feet from the front Lot line.
- T. Multi-family Residential. The following restrictions shall apply to Lots designated for Multi-family Residential use in a Supplemental Declaration:
  - (i) Zoning. Multi-family residential use shall be approved by any governmental body, whose approval may be required.
  - (ii) Minimum Areas. The amount of fully enclosed floor area devoted to living purposes in each such unit shall not be less than 450 square feet.
  - (iii) Carport or Garage. A carport, garage or parking space shall be constructed for each dwelling unit constructed.

(iv) Type of Construction. Subject to the approval of the Committee, Multi-family Dwellings may be of single or multiple story construction, and may be detached or joined by common walls.

U. Penalty for Non-Compliance. In addition to the remedies set forth in Paragraph 8, below, and any other remedies at law or in equity, the Association may, through its Board of Directors, levy or assess a monthly charge not to exceed the then current annual charge upon any member who, after adequate notice and an opportunity to be heard before the Board, fails to maintain any Lot or Improvement erected or placed thereon in good and clean condition and in such manner as to prevent it from becoming unsightly, unsanitary or a hazard to health or otherwise fails to comply with Paragraph 4, below, and the rules and standards adopted by the Environmental Control Committee pursuant thereto. Such monthly charge shall continue to accrue until the complained of condition is remedied, and shall be added to and become a part of the annual charge to which such lot is subject.<sup>1</sup>

3. GENERAL APPLICATION - COMMON AREAS. The following apply to all Common Areas as defined in Article 1:

A. Ownership. All Common Areas are private property and shall remain private property. Declarant's or Trustee's recording of the Plat shall not be construed as a dedication to the public of any of the Common Areas. A license upon such terms and conditions as the Association shall from time to time specify for the use or enjoyment of each of the Common Areas is granted to the persons who are from time to time Members of the Association, subject to easements that may exist or be granted from time to time.

Declarant or Trustee has conveyed, or will convey to the Association, prior to the conveyance of any Lot in the Development, fee simple title to all Common Areas, designated as such in the First Supplemental Declaration, and will convey to the Association, prior to conveyance of any Lot designated by any subsequent Supplemental Declaration, all Common Areas designated as such by said Supplemental Declaration, free and clear of all encumbrances except such easements, rights and interests as then appear of record and such other reservations and conditions as Declarant or Trustee may at the time of such conveyance reserve or impose. Use of the Common Areas shall be subject to rules and regulations of the Association.

- B. Utilities and Access. At any time and from time to time, Declarant may, at its own cost, construct or alter any improvement upon or make 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 or dig any wells or construct, operate, repair, maintain, use and remove any drainage, sewage, water, power or telephone plant or other facility upon or lay any lines, cables or other conduits for any public or private utility purposes within the Common Area if the Declarant shall determine that any such work either is reasonably necessary for any public or private utility installation serving any property within the Development or is desirable in order to provide or improve access to or enhance the use and enjoyment of the Common Area, provided that such construction, alteration, excavation, change, planting, etc. shall be subject to the prior approval of the Committee if the same does not constitute a part of the Declarant's sale offering as described in the Hawaii public offering statement or the California Department of Real Estate Permit.

4. THE ENVIRONMENTAL CONTROL COMMITTEE. The following apply to all Lots designated for Residential or Common Area in a Supplemental Declaration:

A. General Powers of the Committee.

(i) Power of Approval. No Improvement may be constructed without the prior written approval of the Committee. Such approval shall be granted only upon the written application in the manner and form prescribed by the Committee, accompanied by two sets of plans and specifications for such Improvement. The application shall show the location of all Improvements existing upon said Lot, the location of the Improvement proposed to be constructed, the color and composition of all exterior materials to be used, any proposed landscaping, and any other information which the Committee may require, including soil, engineering and geologic reports and recommendations. Without the prior written approval of the Committee, no then-existing grade shall be altered on any Lot or any portion thereof. No approval by the Committee shall be required for development work by Declarant if such development work is a part of the Declarant's sale offering as described in the Hawaii public offering statement or the California Department of Real Estate Permit.

(ii) Power of Disapproval. The Committee may disapprove any application:

(a) which does not comply with this Declaration; or

(b) because of reasonable dissatisfaction with grading plans, location of the proposed Improvement on a Lot, finished ground elevation, color scheme, finish, design, proportions, architecture, shape, height or style of the proposed Improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon,

or

(c) if, in the judgment of the Committee reasonably exercised, the proposed Improvement will be inharmonious with the Development, or with the Improvements erected on other Lots. The Committee shall adopt written rules governing its procedures.

(iii) The Power to Grant Variance. The Committee may allow reasonable variances from the provisions of this Declaration if literal application thereof results in unnecessary hardship, if such variance is in conformity with the general intent of this Declaration and if the granting of such variance will not be materially detrimental or injurious to the Owners of other Lots.

(iv) Power to Charge Fees. The Committee may require a reasonable filing fee to accompany each submission or resubmission of plans and specifications, to be not more than one-fourth (1/4) of one per cent (1%) of the estimated cost of the proposed improvement, subject to a minimum fee of \$5.00. No additional fee shall be required for resubmissions.

B. Committee Membership. The Committee shall be composed of three members appointed by Declarant. Committee members may be removed by Declarant. Vacancies shall be filled by Declarant, or if Declarant fails to do so within two months, by the Board. The power to appoint or remove Committee members shall be transferred permanently to

the Association upon:

(i) A lapse of 18 months between filings of incremental unit maps of the Development, provided that 90% of the then aggregate number of lots in all recorded incremental units of the Development have been sold by the Declarant; or

(ii) A lapse of three years from the date of the Final Subdivision Public Report of the California Department of Real Estate applicable to the next proceeding unit of the Development, regardless of whether or not 90% of the aggregate number of lots

in all recorded incremental units of the Development have been sold.

- C. Duties of the Committee. The Committee shall act within a reasonable time after all required information shall have been submitted. The Committee shall retain one copy of submitted material and return the other copy. All notices to applicants shall be in writing. Any disapproval shall specify the reason therefor. The approval of the Committee of plans and specifications shall not be a waiver by the Committee of its right to object to any of the features or elements contained in any subsequent plans or specifications submitted for approval. The Committee may inspect work being performed to assure compliance with this Declaration and the Committee's rules. Failure of the Committee to act upon the application within 30 days shall constitute approval of the application. At any time prior to the completion of construction of an Improvement, the Committee may require a certification of the contractor, owner or a licensed surveyor, that such Improvement does not violate any setback rule, ordinance or statute nor encroaches upon any easement or right-of-way of record. Such certification shall be delivered to the Committee within 10 days after completion of such Improvement.
- D. Liability of Committee. Neither the Committee, the Declarant, the Trustee, the Association, nor any person acting on behalf of any of them, shall be responsible in any way for any defects in plans or specifications or other material submitted to the Committee, nor for any defects in any work done.
- E. Appeals. Any Owner shall have the right to appeal to the Board from any adverse decision of the Committee within 30 days after the giving of notice of disapproval.

## 5. EASEMENTS

- A. Reservations. Easements over each Lot (other than condominium apartments) as shown on the Plat and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant and Trustee for the benefit of Declarant, the Trustee and their respective grantees and lessees.
- B. Use of Maintenance by Owners. No structure planting or activity shall be permitted on any easement which may damage or interfere with the use of said easements for the purposes herein set forth.
- C. Liability for Use of Easements. No Owner shall have any claim for injury to real property or interests therein, against Declarant or Trustee or their licensees arising out of the exercise or non-exercise of any easement reserved hereunder or on the Plat except in case of willfulness or gross negligence.

## 6. ANNEXATION OF SUBSEQUENT UNITS OR PARCELS.

- A. Property to be Annexed. Declarant or Trustee may, from time to time and in its sole discretion, annex to the Development any real property which from time to time may be owned by Declarant or Trustee which is in the vicinity of the Development and which was originally a part of a parcel of approximately 31,000 acres described in Deed dated December 12, 1968, recorded in the Bureau of Conveyances of Hawaii in Liber 6331 at page 2 from Richard P. Smart to Trustee, and unrecorded Option Agreement dated March 11, 1968 between said Richard P. Smart and Declarant. The Association may also from time to time, upon petition by the landowner, annex to the Development any real property in the vicinity of the Development by vote of members

entitled to exercise a majority of the voting power of the Association at a meeting duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider such annexation, a certificate duly executed and recorded in the Bureau of Conveyances by the President or Secretary of the Association of such meeting and vote to be deemed conclusive as to all parties relying thereon prior to the recordation of an appropriate instrument rescinding or invalidating the action taken or such certificate.

- B. Manner of Annexation. Declarant, Trustee or Association shall effect such annexation by recording a map of the real property to be annexed (if no appropriate map has already been recorded) and by recording a Supplemental Declaration which shall:
- (i) Describe the real property being annexed and designate the permissible uses thereof;
  - (ii) Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration; and
  - (iii) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive use of Common Areas Upon the recording of such map and Supplemental Declaration, the annexed area shall become a part of the Development and shall be subject to the provisions hereof, as supplemented, as fully as if such area were part of the Development on the date of recording of this Declaration.

## 7. THE ASSOCIATION.

- A. General. The Association has been or will be created as a not-for-profit corporation. Every Owner of a Residential Lot shall be a Member of the Association. Declarant may designate an employee

of Declarant to exercise the power and to enjoy the rights and privileges of membership, for each Lot owned by Declarant, but such designation shall not relieve Declarant of any of the duties of ownership.

B. Purpose. The purpose of the Association is to promote the common interests of the Members and to operate, maintain, repair and replace the Common Areas, and it shall have all necessary or appropriate powers to accomplish the same including, without limitation, the power to promulgate and enforce rules and regulations covering the use and enjoyment of the Common Areas, to charge reasonable fees for such use and to contract with others for the operation, maintenance or repair thereof, or for the use and enjoyment thereof in common with and on not more favorable terms than the Members, and to enforce the provisions of this Declaration.

C. Powers. In addition to all its other powers, the Association may levy a uniform annual charge against each Residential Lot to be used exclusively for the purpose of promoting the recreation, health, safety and welfare of its Members, for the care, improvement, maintenance, repair and replacement of the Common Area and all property owned by the Association, and for carrying out the functions and duties of the Association, which charge shall be in such amount as may be determined by the Board but not less than \$50.00 per year on each Lot. Each Member, including Declarant, shall pay the annual charge for each Lot owned by him. The Board may increase the annual charges, but all charges shall be increased proportionately.

(i) Collection of Annual Charges. The charges levied by the Association shall be paid to it, annually or in quarterly or monthly installments, on or before the date or dates as determined by resolution of the Board. Written notice of the charge and the dates of payment shall be sent to each Member at the address last

given by the Member to the Association. If any charge levied against any Lot, or any Installment thereof, shall not be paid when due, it shall become a lien upon said Lot and shall remain a lien until paid in full. The Board may bring such actions in law or in equity by way of foreclosure of such lien in like manner as if a mortgage or otherwise, to collect the amount of said charge, including interest, and costs of collection and attorney's fees.

(ii) Binding Nature of Charge. Conveyance or lease of any Lot shall not affect any lien for charges provided for herein. The lien of a first mortgage or first trust deed placed upon any Lot and which is properly recorded shall be, from the date of recordation, superior to any and all such liens provided for herein.

(iii) Proof of Payment. The Association shall on request furnish a statement certifying that the charges against a specified Lot have been paid or that certain charges remain unpaid, as the case may be.

(iv) Suspension of Privileges of Membership. The Board may suspend the voting privileges of any Member and the Member's right to use the Common Areas for:

(a) Any period during which any Association charge remains unpaid; and

(b) Any period of continuing violation of the provisions of this Declaration after the existence thereof shall have been declared by the Board and the Member has been given a reasonable opportunity to be heard by the Board.

F. Services. The Association may also provide for garbage and refuse collection and disposal, and other services of the type normally supplied by governmental agencies or public utility corporations for Members as to the use and enjoyment of their Lots, and may levy appropriate charges therefor against all Members benefited, which charges may be added to the annual charges hereinabove described and collected in like manner.

G. Management Agreement. The Association is hereby authorized and empowered, and its Board of Directors and/or its Officers are hereby authorized and empowered on its behalf, to enter into that certain Management Agreement of Common Areas with Boise Cascade Home & Land Corporation proposed to the Association at its annual meeting of members held on May 31, 1975. That Management Agreement, a copy of which is attached hereto and made a part hereof for all purposes and all its terms, including but not limited to its requirements concerning annual charges to be levied on Association members in future years, its provision for the payment of such certain charges to Boise therein, and its grant of control over the operation and use of the Common Area to Boise for the full term of said Management Agreement subject to the provisions thereof are hereby approved. In the event of any inconsistency between the provisions of this document and the terms of said Management Agreement, the terms of said Management Agreement shall control and be binding upon the Association and Boise. Boise shall not exercise voting rights which it may have as a Member of the Association in any vote of the Association Membership on any future amendment of the Management Agreement proposed to the Association on May 31, 1975, unless requested to vote by the President of the Association. If so requested, Boise shall vote all its votes as a Member in the same proportion for and against such amendment as those votes cast by Members other than Boise. Such votes shall not be construed as approval or disapproval of the amendment by Boise.

## 8. REMEDIES.

- A. Enforcement. Declarant, Trustee, Association and each person to whose benefit this Declaration inures may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this Declaration, and the court in any such action may award the successful party all reasonable expenses in prosecuting such action, including attorney's fees.
- B. Cumulative Remedies. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of the Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of different violation.

9. WATER AND SEWER SERVICE. Each Owner shall pay to the Waikoloa Water Co., Inc., such charge as may be lawfully imposed by said water company in accordance with regulation of the Hawaii Public Utilities Commission, which charges shall be in amounts approved by said Hawaii Public Utilities Commission, and shall also pay to the Waikoloa Sanitary Sewer Co., Inc. all charges for sewage services imposed by said sewer company. Any charges not so paid may, but need not, be paid by the Association, and any amount so paid by the Association shall be added to and become a part of the annual charge to which the Lot owned by said Owner is subject. If all of the capital stock of either the Waikoloa Water Co., Inc. or the Waikoloa Sanitary Sewer Co., Inc., or both, shall be offered to the Association, the Association shall accept the same and thereafter cause such company or companies to carry out the functions and operations of supplying water and sewer service for Waikoloa Village in accordance with the purposes for which said

companies were formed and as required for proper use of the Lots in Waikoloa Village.

10. GRANTEE'S ACCEPTANCE. Consent to Declaration. Each grantee or purchaser of a Lot, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, Trustee or a subsequent Owner of such Lot, shall accept such deed or contract upon and subject to all provisions of this Declaration and subject to the jurisdiction, rights, powers, privileges and immunities of Declarant, Trustee, the Committee, and the Association and shall agree to pay the charges levied against his Lot by the Association. By such acceptance, such grantee or purchaser shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, Trustee and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

11. OCCASIONS FOR SUSPENSION. The restrictions on improvements, use and occupancy set forth herein shall be suspended as to any Lot or other area while and so long as the same is owned by or leased to State of Hawaii or County of Hawaii, or any governmental agency or public or private utility having the power of eminent domain, and used for public, governmental, utility, educational, community or civic purposes, whenever and to the extent, but only to the extent, that such restrictions shall prevent reasonable use of such Lot for said purposes. All restrictions not so preventing shall continue to apply as if not so used, including without limitation, the requirements of Committee approval regarding improvements to be made by said State of Hawaii, County of Hawaii, agency, or public or private utility, in the same manner as if the same were to be made by any private individual or Owner. On cessation of such use, the restrictions of this Declaration

shall become applicable again in their entirety. Declarant and the Association shall each have the power to release any Lot or other area owned by it, temporarily or forever from any and all provisions of the Declaration if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of the same by said State of Hawaii, County of Hawaii, agency, or public or private utility. While so owning or leasing and so using, said State of Hawaii, County of Hawaii, agency, or public or private utility, shall have no right to vote as a member of the Association nor shall it be liable for any charges under the provisions of Section 9.

12. SEVERABILITY. Every provision of this Declaration is hereby declared to be independent of, and severable from every other provision of this Declaration. If any such provision shall be held to be invalid or unenforceable, or not to run with the land, that holding shall be without effect upon the validity, enforceability or running of any other provision of this Declaration.

13. CAPTIONS. All captions in this Declaration are for convenience only and do not in any way limit or amplify the provisions hereof.

14. TERM AND AMENDMENT. The provisions of this Declaration affect and run with the Land and shall exist and be binding upon all parties claiming an interest in the Development until January 1, 1995 after which time the same shall be extended for successive periods of ten (10) years each unless, prior to the expiration of the initial or any successor period then current, there shall be recorded in the Bureau of Conveyances of Hawaii either (i) an instrument signed by a majority of the then record owners of all lots agreeing to change the covenants herein in whole or in part, or (ii) a certificate executed by the Secretary of the Association attesting to the affirmative vote to effect such

amendment by a majority of the then record owners at a duly-held meeting of the Association, with an attached copy of such amendment.

15. JOINDER. First Hawaiian Bank, Trustee as aforesaid, does hereby consent to and join in this Declaration and agree that all of its right, title and interest in and to the lands herein described shall be subject thereto.

IN WITNESS WHEREOF, Declarant and Trustee have executed this Declaration this 27th day of May 1971.

BOISE CASCADE HOME & LAND CORPORATION

FIRST HAWAIIAN BANK

Original recorded with Bureau of Conveyances June 2, 1971, Uber 7577, Page 66. Subsequent amendments regarding certain lots recorded through May 24, 1974. Amendments deleting Paragraph 6.C. and adding Par 7.E. and annexing Lot 5 were recorded June 12, 1975 and June 16, 1975. A special election held November 19, 1980, changed the minimum area of dwellings from 750 to 1,000 square feet. A vote at the annual meeting, March 24, 1984, changed

Sec. 2, General Application, Residential, to require a double carport or garage for each single family residence.

RESTATED DECLARATION OF PROTECTIVE COVENANTS  
OF WAIKOLOA VILLAGE  
ENDNOTES

The following Declaration provisions have been restated for the reasons set forth below:

1. Paragraph U. Section 2 of the Declaration of Protective Covenants has been restated to incorporate the language in the Amendment recorded in the Bureau of Conveyances of the State of Hawaii Doc A-52100532.
2. Item (i) of Paragraph S, Section 2 of the Declaration of Protective Covenants has been restated to incorporate the language in the Amendment recorded in the Bureau of Conveyances of the State of Hawaii in Liber 20893 at Page 418.