

RECORDATION REQUESTED BY:

72- 39324

LIBER 8342 PAGE 268
1972 JUN -2 PH 2:54

AFTER RECORDATION, RETURN TO:

IZUMI & TAHAKA
701 C. R. Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813
PH- 536 9307

44-

[Signature]
REGISTERED REGISTRAR

RETURN BY: MAIL () PICKUP (x)

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DECLARATION OF PROTECTIVE COVENANTS
FOR
DISCOVERY HARBOUR SUBDIVISION

THIS DECLARATION is made this 4th day of May,

1972, by CAL-PACIFIC RESOURCES OF HAWAII, LTD., a California Corporation, whose principal place of business is Suite 200, 550 California Avenue, Palo Alto, California, hereinafter referred to as "Declarant", and GRAYCO LAND ESCROW, LTD., a California Corporation, whose principal place of business is 572 East Green Street, Pasadena, California, 91101, hereinafter referred to as "Trustee".

WHEREAS, Declarant is the developer and beneficial owner of the real property located in the County and State of Hawaii, known as Discovery Harbour Subdivision (the "Development") described in the Supplemental Declaration attached hereto as Exhibit A and made a part hereof;

WHEREAS, Trustee will hold legal title to said real property pursuant to the provisions of that certain unrecorded Subdivision Agreement dated May 4, 1972, by and between Trustee, Declarant and Cal-Pacific Resources, Inc., a California Corporation;

WHEREAS, 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,

I hereby certify that this is a true copy from the records of the Bureau of Conveyances.

[Signature]
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

BUREAU

equitable servitudes and charges under a general plan or scheme of improvement for the benefit of all 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 said lots and parcels. All of such provisions shall, as to the owner of each such lot or parcel, his heirs, successors or 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:

1. "Association shall mean the Discovery Harbour Community Association, a non-profit corporation.
2. "Board" means the Board of Directors of the Association.
3. "Committee" means the Environmental Control Committee.
4. "Common Area" means all of the real property designated as such in the Supplemental Declaration and all real property acquired or leased by the Association, whether acquired or leased 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, golf courses, lakes, parks and streets, but excepting and excluding all easements, rights and interest 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.

5. "Declarant" means Cal-Pacific Resources of Hawaii, Ltd. and its successors and assigns as the developer of the Development.

6. "Declaration" means this Declaration of Protective Covenants and any amendments hereto.

7. "Development" means all that real property situate in the District of Ka'u, County and State of Hawaii, described in the Supplemental Declaration and all other real property which may be annexed thereto as provided herein.

8. "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.

9. "Lot" means any lot as designated on the Plat, or any apartment or living unit in a condominium project on any lot. Land owned in common as part of a condominium project 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. Lots will be classified "single-family residential", or "multi-family residential" or "village commercial" in a Supplemental Declaration.

10. "Member" means the Owner of a lot, who shall be a member of the Association.

11. "Owner" means:

(a) 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

(b) 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

(c) 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 fifty (50) years, in which case the lessor under said lease shall cease to be the Owner while said lease is in effect.

12. "Plat" means the recorded File Plans for the Development which shows the Lots and Common Areas.

13. "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 five (5) persons not so related, together with his or her domestic servants, maintaining a common household in such dwelling.

14. "Supplemental Declaration" means:

(a) The recorded Supplemental Declaration of Declarant attached hereto as Exhibit A and as amended from time to time; or

(b) 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.

15. "Trustee" means the Grayco Land Escrow, Ltd. or any successor trustee appointed pursuant to the terms of the Subdivision Agreement.

II. GENERAL APPLICATION
SINGLE-FAMILY RESIDENTIAL.

The following apply to any Lot designed in a Supplemental Declaration as "Single-family residential":

1. No improvement except a single-family dwelling and such outbuildings as are usually accessory thereto shall be constructed, placed or permitted on any Lot designated for single-family residential use in a Supplemental Declaration. The following restrictions shall apply specifically to such Lots:

(a) Minimum Area: Each dwelling constructed shall have fully enclosed floor area (exclusive of roofed or unroofed porches, terraces, garages, carports or other outbuildings) of not less than 750 square feet for any Lot designated on a Supplemental Declaration and shall also have, as an accessory thereto, a carport, garage or parking space, unless otherwise permitted by the Committee, or Declarant because of terrain problems.

(b) Single Story Construction: Each such dwelling shall be single-story, unless split-level or two-story construction is approved by the Committee.

(c) Set Backs: Every dwelling shall be at least 25 feet from the front Lot line.

2. Accessory Outbuildings. No garage or shed shall be built before a dwelling is built on a Lot. No garage, shed, temporary building, or partially-completed building shall be used for human habitation.

3. Completion of Construction. Every improvement on a single-family residential Lot, once begun, shall be completed within nine (9) months from commencement. Every improvement on any Lot designated for other uses shall be completed within the time period established by the Committee. Improvements not

completed within the required time period, improvements on which construction is interrupted for ninety days, and improvements partially or totally destroyed and not rebuilt within nine months shall, unless an extension is granted, be deemed a nuisance. The Association, Declarant or Trustee may remove any such nuisance or repair or complete the same, at the cost of the Owner.

4. Prohibition Against Used Buildings. No used buildings shall be placed on any Lot. Reflective materials or metallic roofs shall not be used as part of any improvements, unless specifically approved by the Committee.

5. 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 enter upon such Lot and 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.

6. 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.

7. Nuisances. No noxious or offensive activities or nuisances shall be conducted or suffered on any Lot.

8. Signs. All signs, billboards, or advertising structures of any kind are prohibited except professionally prepared signs of customary and reasonable dimension, not exceeding five (5) square feet in area may be displayed on any Lot advertising it, together with any improvements located thereon, for sale or lease, or except upon application to and written permission from the Committee. This restriction shall not be applicable to Declarant.

9. Animals. No animals shall be kept on any Lot except usual household pets, provided that such pets are not kept, bred or maintained for commercial purposes. Household pets shall be kept reasonable confined so as not to become a nuisance.

10. 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.

11. 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.

12. Concealment of Fuel Storage Tanks and Trash Receptacles. All fuel storage tanks or equipment on any Lot shall be either buried below ground or screened from view 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.

13. 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.

14. 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 prior written 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.

15. 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.

16. Resubdivision or Joinder of Lots. No Lot designed for single-family residential use in a Supplemental Declaration shall be subdivided. Density of dwelling units or condominium apartments on Lots designated for multi-family use in a Supplemental Declaration shall not exceed the density permitted by law or variance or special permit. 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.

17. Drilling and Mining and Water Rights. No drilling, refining, quarrying or mining operation of any kind shall be permitted on any Lot. Declarant reserves the right unto itself, its successors and assigns to all rights to underground water provided that such reservation shall not include any surface right to enter upon and drill for water.

18. View Protection. It is the intent of this Declaration to protect the view of each Lot Owner. The location of every dwelling and other structure on each Lot shall be subject to the prior approval of the Committee, so as to protect as much as is reasonably possible the view from each other Lot.

III. GENERAL APPLICATION
MULTI-FAMILY RESIDENTIAL

The following restrictions shall apply to Lots designated for multi-family residential use in a Supplemental Declaration:

1. Zoning. Multi-family residential use shall be approved by any governmental body as required.
2. Minimum Areas. The amount of fully enclosed floor area devoted to living purposes in each such unit shall not be less than 350 square feet.
3. Carport or Garage. A carport, garage or parking space shall be constructed for each dwelling unit constructed.
4. Type of Construction. Subject to the approval of the Committee, multi-family dwellings may be of single or multiple story construction, but no more than three stories, and may be detached or joined by common walls.
5. Other Protective Restrictions. In addition to the foregoing, all Lots designated for multi-family residential use shall be subject to the restrictions and covenants set forth in Subparagraphs 2 through 18, both inclusive, of Section II of this Declaration.

IV. GENERAL APPLICATION
COMMON AREAS.

The following apply to all Common Areas as defined in Section I hereof:

1. 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 has agreed to lease to the Association for a term of fifteen (15) years, and to convey fee simple title to the Association upon expiration of said fifteen (15) year term, the golf course designated as a portion of Lots 821 and 825 on File Plan No. 1261 of Discovery Harbour Subdivision Unit No. 1, for the use and enjoyment of all Members of the Association as part of the Association's Common Areas, subject to easements, rights of way, rights and interests 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.

2. Maintenance. Upon the effective date of said lease of the golf course to the Association, the Association shall thereafter maintain and repair such areas. After conveyance to the Association of the areas, the Association shall continue to maintain and repair those Common Areas.

3. 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 Areas

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 Areas.

V. ENVIRONMENTAL CONTROL COMMITTEE

The following apply to all Lots designated as single-family residential or multi-family residential or Common Area in a Supplemental Declaration:

1. General Powers of the Committee.

(a) Power of Approval. No improvement may be constructed without the prior written approval of the Committee. Such approval shall be granted only upon 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.

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

(i) which does not comply with this Declaration;

or

(ii) 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

(iii) if, in the judgement 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.

(c) The Power to Grant Variances. 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.

(d) Power to Charge Fees. The Committee may require a reasonable filing fee to accompany such submission of plans and specifications, to be not more than one-fourth of one percent ($\frac{1}{4}\%$) of the estimated cost of the proposed improvement, subject to a minimum fee of \$5.00. No filing fee shall be required of the Declarant. No additional fee shall be required for resubmissions.

2. Committee Membership. The Committee shall be composed of three (3) 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 a lapse of five (5) years from the date of the Final Subdivision Public Report to the Department of Regulatory Agencies of the State of Hawaii, Real Estate Division applicable to the first unit of the Development, or at such time as ninety percent (90%) of the lots subject to this Declaration have been sold.

3. Duties of the Committee. The Committee shall act within thirty (30) days 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 sixty (60) 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 ten (10) days after completion of such improvement.

4. 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.

5. Appeals. Any Owner shall have the right to appeal to the Board from any adverse decision of the Committee within thirty (30) days after the giving of notice of disapproval.

6. Prior Construction. All improvements for which a building permit or other application has been filed with the County of Hawaii at the date or prior to the date of execution of this Declaration shall be deemed approved by the Committee.

VI. EASEMENTS.

1. 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.
2. Use or Maintenance by Owners. No structure, planting or activity shall be permitted on any easement which may damage, obstruct or interfere with the designated use or purpose of said easement.
3. Liability for Use of Easements. No Owner shall have any claim against Declarant or Trustee or their licensees arising out of the exercise or non-exercise or use or non-use of any easement reserved hereunder or on the Plat except in case of willfull or wanton negligence.

VII. ANNEXATION
OF SUBSEQUENT UNITS OR PARCELS

1. Property to be Annexed. Declarant or Trustee may, at any time within three (3) years from the date of recordation of this instrument, and in its sole discretion, annex to the Development any real property which was originally a part of a parcel of approximately 1,302 acres described in Deed dated June 4, 1968, recorded in the Bureau of Conveyances of Hawaii in Liber 6144 at Page 113. 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 two-thirds majority of the voting power of the Association exclusive of the voting power of Declarant to morethan one (1) lot, 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 certifying the due holding of such meeting and vote shall be deemed conclusive as to all parties relying thereon prior to any recordation of an appropriate instrument evidencing the rescinding or invalidating of such annexation action.

2. 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:

(a) Describe the real property being annexed and designate the permissible use thereof;

(b) 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

(c) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive use of the Common Areas.

Upon recordation 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.

VIII. THE ASSOCIATION.

The Association has been or will be created as a non-profit corporation. Every Owner of a Lot or Parcel in the Development 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.

1. 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.

2. Powers. In addition to all its other powers, the Association may levy a uniform annual charge against each Lot or Parcel 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 or leased by the Association; the acquisition, leasing, development, operation and improvement of real property; and for carrying out the functions and duties of the Association. The initial monthly charge for such purposes shall be \$9.50 per month. Such charge may be increased or decreased from time to time at the discretion of the Board as may be reasonably necessary for such purposes; provided, however, that any increase in monthly charge in excess of \$12.00 per month shall require the vote of written consent of not less than two-thirds (2/3) of the Members.

After the end of the first fifteen (15) years, the Board may establish the charge on an annual basis in such amount as it shall determine, to be reasonably necessary for carrying out the purposes of the Association.

(a) Collection of Annual Charges. The charges levied by the Association shall be paid to it in 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.

The Board may authorize any person to collect the charges monthly and to disburse to the Association the sums collected less reasonable collection fees. 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.

(b) Binding Nature of Charge. A conveyance or lease of any lot shall not affect any lien of the Association for unpaid charges, or the lien under any agreement for the sale of such lot. However, the lien of the Association shall be subordinated to any subsequent bona fide construction or permanent loan for the making of permanent improvements upon the property.

(c) Proof of Payment. The Association or its agent 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.

(d) 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:

- (i) any period during which any Association charge remains unpaid; and
- (ii) any period of continuing violation of the provisions of this Declaration after the existence thereof shall have been declared by the Board.

(iii) any Member whose membership privileges have been suspended may request a hearing by the Board within thirty (30) days of Member's receipt of notice of suspension of privileges from the Board, and the Board shall have the power to reinstate membership privileges for good and sufficient cause.

3. 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 therefore against all Members benefited, which charges may be added to the annual charges hereinabove described and collected in like manner.

4. Right to Contract. The Association may also contract with the Declarant or Trustee for the use of the 18-hole golf course and whatever recreational facilities developed by Declarant can have full use of the facilities along with other guests of Declarant, subject to the payment of fees that shall be agreed upon between the parties. Such contract can require each Member, other than Declarant or Trustee, to participate in the program.

IX. REMEDIES.

1. Enforcement. Declarant, Trustee, Association and each person to whose benefit this Declaration insures may proceed at law or in equity to prevent the occurrence or continuation of any violation of any provision of this Declaration, and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

2. 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 this 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 a different violation.

X. GRANTEE'S ACCEPTANCE.

1. 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 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.

XI. 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 the State of Hawaii or the County of Hawaii, or any governmental agency and used for public or governmental 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, or governmental agency 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, or governmental agency. While so owning or leasing a Lot, said State of Hawaii, County of Hawaii or governmental agency 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 VIII.

XII. 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.

XIII. CAPTIONS.

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

XIV. 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 (1) 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, (2) 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.

XV. JOINDER.

Trustee as aforesaid, does hereby consent to and join in this Declaration and agrees 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 4th day of May, 1972.

DECLARANT:

CAL-PACIFIC RESOURCES OF HAWAII, LTD.

BY [Signature]
BY [Signature]

TRUSTEE:

GRAYCO LAND ESCROW, LTD.

BY [Signature] VICE PRES.
BY Mabel R. Roberts - Secy.

