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STATE OF HAWAII

BUREAU OF CONVEYANCES

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DOCUMENT NO. 2000-148513

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ( ) PICKUP ( ) TO:

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Total pages:

FIRST RESTATEMENT OF THE  
DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF TROPICANA VILLAGE-AIEA, PHASE 2 and 3

WHEREAS, the TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, herein called the "Trustees", own in fee simple certain real property described as follows:

ALL those two (2) certain parcels of land (parts of R. P. 1963, L. C. Aw. 5524, Ap. 6 to L. Konia) situate at Kaonohi, Kalauao, District of Ewa, City and County of Honolulu, State of Hawaii, containing a total area of 349,454 square feet and comprising:

- A. Lot 1, area 245,032 square feet comprising Kaonohi Ridge Condominium Phase II, as shown on File Plan 1131 filed in the Bureau of Conveyances of Hawaii;
- B. Lot 1, area 104,422 square feet comprising Kaonohi Ridge Condominium Phase III, as shown on File Plan 1132 filed in the Bureau of Conveyances of Hawaii.

SUBJECT to all easements shown on said File Plans, and reserving unto the Trustees within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

WHEREAS, CENTRAL OAHU LAND CORPORATION and TROUSDALE CONSTRUCTION COMPANY associated in a joint venture known as CENTRAL-TROUSDALE, herein called the "Lessee", which as the holder of Bishop Estate Lease No. 16,910, recorded in the Bureau Liber 6790, page 69, and pursuant to the terms of the lease, undertook to improve the land by the constructing on it certain improvements in accordance with plans incorporated herein by reference and recorded in the Bureau as Condominium File Plan No. 155;

WHEREAS, in order to create a condominium project consisting of the land and improvements (herein called the "Project") and to be known as TROPICANA VILLAGE-AIEA, PHASE 2 and 3, the Trustees and Lessee submitted the property to a Horizontal Property Regime Established by the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes (now known as the Condominium Property Act, Chapter 514A, HRS), as amended, and made the following declarations as to divisions, limitations, restrictions, covenants and conditions and declared and agreed that the property was to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Declaration, which Declaration constitutes covenants running with the land and is binding on and for the benefit of the parties hereto, their respective successors and assigns, and all subsequent owners and lessees of all or any part of the project and their respective successors, heirs, executors, administrators and assigns; and (See Endnote 1)

WHEREAS, By-Laws for the project were attached to and recorded contemporaneously with the Declaration as Exhibit "A", but are now being recorded separately, to bind all present and future owners, tenants and occupants of any apartments of the project and all other persons who at any time use the project to the limitations, restrictions, covenants and conditions in the By-Laws; and

WHEREAS, the Declaration was amended by documents recorded in liber 7585, page 226; liber 15501, page 478 and liber 19467, page 514, dated March 25, 1971, March 23, 1981, and March 27, 1986, respectively; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, authorizes the Board of Directors of the Association established by the By-Laws to restate the Declaration to include in it any amendments and to conform its provisions to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on July 25, 2000 the Board of Directors resolved to restate the Declaration, pursuant to Section 514A-82.2, Hawaii Revised Statutes, in the manner set forth herein;

NOW, THEREFORE, the Declaration is hereby restated to read as follows:

A. DIVISION OF PROPERTY. The project is hereby divided into the following separate freehold estates:

1. Apartments. One hundred Twelve freehold estates are hereby designated in the spaces within the perimeter walls, floors and ceilings of each of the 112 apartment units of the project contained in thirty-two (32) buildings, constructed principally of reinforced-concrete slabs, concrete hollow-tile, stucco facings and wood-frame walls and shake roofs and designated as Buildings 23 to 44, inclusive, and 47 to 56 inclusive, which spaces (herein called the "apartments") are designated on said plans and described as follows:

(a) (i) In addition to apartment numbers, building number and building type, all apartments are further identified by said plans and herein called either typical or alternate. All apartments with basements are so identified and called "typical", and all apartments without basements are so identified and called "alternate". Any apartment (either typical or alternate) further identified by said plans and herein called "reverse" is an apartment with the usual layout of rooms reversed.

(ii) Ten (10) two-bedroom apartments, each utilizing plans identified as Floor Plan Unit Type K containing six rooms and gross floor area of approximately 1008 square feet, are located in three (3) two-story buildings, with two apartments in the 2-

apartment Building Type Y building and four apartments in each of two 4-apartment Building Type Z buildings, and numbered as follows:

<u>Apartment No.</u>	<u>Building No.</u>	<u>Building Type</u>
43-1, 43-2, 43-3 and 43-4	43	Z
54-1, 54-2, 54-3 and 54-4	54	Z
55-1 and 55-2	55	Y

(iii) Thirty (30) two-bedroom apartments, each utilizing plans identified as Floor Plan Unit Type L containing six rooms and gross floor area of 955 square feet, are located in ten (10) two-story buildings, with four apartments located in each of the five 4-apartment Building Type R buildings and one apartment at each end in each of the five 4-apartment Building Type O buildings, and number as follows:

<u>Apartment No.</u>	<u>Building No.</u>	<u>Building Type</u>
23-1 and 23-4	23	O
25-1 and 25-4	25	O
28-1 and 28-4	28	O
31-1, 31-2, 31-3 and 31-4	31	R
34-1, 34-2, 34-3 and 34-4	34	R
35-1, 35-2, 35-3 and 35-4	35	R
42-1, 42-2, 42-3 and 42-4	42	R
48-1 and 48-4	48	O
52-1, 52-2, 52-3 and 52-4	52	R
53-1 and 53-4	53	O

Apartments 28-1, 31-1, 31-3, 35-1, 35-3, 42-1 and 42-3 are alternate-reverse types. Apartments 25-1, 34-1, 34-3, 48-1, 52-1, 52-3 and 53-1 are typical types. Apartments 23-4, 25-4, 34-2, 34-4, 48-4, 52-2, 52-4 and 53-4 are typical reverse types. Apartments 23-1, 28-4, 31-2, 31-4, 35-2, 35-4, 42-2 and 42-4 are alternate types.

(iv) Seventy-two (72) three-bedroom apartments, each utilizing plans identified as Floor Plan Unit Type M containing nine rooms and a gross area of approximately 1361 square feet, are located in twenty-four (24) two-story buildings, with four apartments in each of the twelve 4-apartment Building Type U buildings; two

apartments in each of the seven 2-apartment Building Type Q buildings, and to apartments comprising the center units in each of the five 4-apartment Building Type O buildings, and numbered as follows:

<u>Apartment No.</u>	<u>Building No.</u>	<u>Building Type</u>
23-2 and 23-3	23	O
24-1 and 24-2	24	Q
25-2 and 25-3	25	O
26-1, 26-2, 26-3 and 26-4	26	U
27-1 and 27-2	27	Q
28-2 and 28-3	28	O
29-1, 29-2, 29-3 and 29-4	29	U
30-1, 30-2, 30-3 and 30-4	30	U
32-1, 32-2, 32-3 and 32-4	32	U
33-1, 33-2, 33-3 and 33-4	33	U
36-1 and 36-2	36	Q
37-1, 37-2, 37-3 and 37-4	37	U
38-1, 38-2, 38-3 and 38-4	38	U
39-1 and 39-2	39	Q
40-1 and 40-2	40	Q
41-1, 41-2, 41-3 and 41-4	41	U
44-1 and 44-2	44	Q
47-1, 47-2, 47-3 and 47-4	47	U
48-2 and 48-3	48	O
49-1, 49-2, 49-3 and 49-4	49	U
50-1 and 50-2	50	Q
51-1, 51-2, 51-3 and 51-4	51	U
53-2 and 53-3	53	O
56-1, 56-2, 56-3 and 56-4	56	U

Apartments 23-3, 24-2, 26-3, 26-4, 28-3, 29-3, 29-4, 33-3, 33-4, 36-2, 37-3, 37-4, 39-2, 40-2, 41-1 and 41-2 are alternate types. Apartments 24-1, 26-1, 26-2, 28-2, 29-1, 29-2, 33-1, 33-2, 36-1, 37-1, 37-2, 39-1, 40-1, 41-3 and 41-4 are alternate-reverse types. Apartments 23-3, 25-2, 27-1, 30-1, 30-2, 32-1, 32-2, 38-1, 38-2, 44-1, 47-1, 47-2, 48-2, 49-1, 49-2, 50-1, 51-1, 51-2, 53-2, 56-1 and 56-2 are typical types. Apartments 25-3, 27-2, 30-3, 30-4, 32-3, 32-4, 38-3, 38-4, 44-2, 47-3, 47-4, 48-3, 49-3, 49-4, 50-2, 51-3, 51-4, 53-3, 56-3 and 56-4 are typical-reverse types.

(b) Each apartments has immediate access to the entry or entries appurtenant to such apartment and walkways connecting to the street entrances and parking areas of the project.

(c) The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or furnished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein including built-in range-oven, water heater, garbage disposer, range hood and dishwasher (Floor Plan Unit Type K only to include in addition to above washer-dryer).

2. Common Elements. One freehold estate is hereby designated in all remaining portions and appurtenances of the project, herein called the "common elements", including specifically but not limited to:

- (a) Said land in fee simple.
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter and load-bearing walls, chases, entries and roofs of said buildings.
- (c) All yards, grounds and landscaping, the swimming pool and other recreational facilities, all refuse facilities, mail boxes and patio slabs.
- (d) All parking areas and spaces, driveways and walkways.
- (e) All ducts, electrical equipment, wiring, pipes, other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, water, gas, sewer, and telephone.

(f) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

3. Limited Common Elements. Certain parts of the common elements, herein called the "limited common elements", are hereby designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) Not less than two automobile parking spaces shall be appurtenant to each apartment, except apartment numbers 54-1 to 54-4, inclusive, which will have one parking space only for each apartment, upon the original conveyance thereof and shall be for the exclusive use of such apartment. Those parking spaces designated on said Condominium File Plan by numbers shall be appurtenant to each alternate type apartment of the same number, and each typical apartment shall have appurtenant parking spaces within the basement beneath their respective apartments.

(b) The entry or entries of each apartment, refuse container and the patio slab shall be appurtenant to and for the exclusive use of such apartment.

(c) All other common elements of the project which are rationally related to less than all of said apartments or buildings shall be limited to the use of such apartments or buildings.

B. COMMON INTEREST. Each apartment shall have appurtenant thereto an undivided 1/112 fractional interest (0.89+ percentage interest) in all common elements of the project (herein called the "common interest") and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting.

C. EASEMENTS. In addition to any easements herein designated in the limited common elements, the apartments and common elements shall have and be subject to the following easements:

1. Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as herein provided; and in all other apartments of the building for support.

2. If any part of the common elements encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event any buildings of the project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to such construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

D. ALTERATION AND TRANSFER OF INTERESTS. The common interest and easements appurtenant to each apartment shall have a permanent character, shall not be altered without the consent of all owners of apartments affected thereby as expressed in an amendment to this Declaration duly recorded, shall not be separated from such apartment and shall be deemed to be conveyed or encumbered with such apartment even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Condominium Property Act.

E. USE. The apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and for no other purpose. The apartments shall not be rented for transient or hotel purposes, which are defined as (a) rental for any period less than 30 days, or (b) any rental in which the occupants of the apartment are provided customary hotel services such as room service for food and beverage, maid service,



laundry and linen or bellboy service. Except for such transient or hotel purposes the owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of this Declaration.

(1) Individual owners may install solar water heaters in their apartments, at their sole expense, providing the following conditions are met:

(aa) Solar units installed on flat roofs must not protrude more than 36" above the roof.

(bb) Solar units installed on gable roofs must not protrude above the highest ridge point.

(cc) Exposed piping must be painted to match or blend with the surrounding surface.

(dd) There must be no reflective glare as would be a nuisance.

(ee) Written approval of the Board of Directors must first be obtained.

(2) (aa) Any apartment owner who installs or causes to be installed any solar water heater shall be responsible for the cost of any repairs to the common elements which may result from said installation and shall be responsible for maintenance and repair of said unit. In the event said solar water heater is removed, the said owner removing said unit shall be responsible, at their cost, to restore the common elements to their original condition.

(bb) If the installed solar unit gets into a state of disrepair, the Association and/or the holder of the Master Lease shall have the right to have the unit removed or to repair it at the cost of the apartment owner of said unit.

(See Endnote 2)

F. ADMINISTRATION OF PROJECT. Administration of the project shall be vested in its Association of Apartment Owners, herein called the "Association", consisting of all apartment owners of the project in accordance with the By-Laws of the Association, originally attached hereto as Exhibit "A" and made a part hereof but now

recorded separately (See Endnote 2). Operation of the project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Condominium Property Act, this Declaration and the By-laws and specifically but without limitation the Association shall (See Endnote 3):

1. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the project or any part thereof.

2. Keep all common elements of the project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the project or the use thereof.

3. Well and substantially repair, maintain, amend and keep all common elements of the project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation, and replant the same as may be necessary, and repair and make good all defects in the common elements of the project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice.

4. Except as provided in Section M.1 of this Declaration, before commencing or permitting construction of any improvement on the project, obtain and deposit with the Trustees a bond or certificate thereof naming as obligees the Trustees and collectively all other apartment owners as their interests may appear, in a penal sum not less than one-half of the cost of such construction and with a corporate surety

authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens. (See Endnote 4)

5. Have the right, to be exercised by its Board of Directors or Managing Agent, to enter any apartments and limited common elements from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs therein required to prevent damage to any apartments or common elements or for the installation, repair or replacement of any common elements.

6. Except as provided in Section M.1 of this Declaration, not erect or place on the project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Trustees, first approved in writing by the Trustees, and complete any such improvements diligently after the commencement thereof. (See Endnote 5)

7. Not make or suffer any strip or waste or unlawful, improper or offensive use of the project.

8. Not erect, place or maintain any television or other antennas on the project visible from any point outside of any building of said project.

G. MANAGING AGENT. Operation of the project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the By-Laws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act. The initial Managing Agent shall be First Hawaiian Bank, whose principal place of business and post-office address is 161 South King Street, Honolulu, Hawaii.

H. COMMON EXPENSES. All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the project,

including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto (excluding additions and alterations constructed or made by apartment owners pursuant to the provisions of this Declaration and/or the By-Laws), any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the project shall constitute common expenses of the project for which all apartment owners shall be severally liable in proportion to their respective common interests. Except as otherwise provided in this Declaration or the By-Laws, the Board of Directors of the Association (herein called the "Board") shall from time to time assess the common expenses against all of the apartments in their respective proportionate shares, and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment which may be foreclosed by the Board or Managing Agent as provided by said Condominium Property Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Trustees and all other persons having any interest in such apartment as shown in the Association's record of ownership. (See Endnote 6)

I. COMPLIANCE WITH DECLARATION AND BY-LAWS. All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the project, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws of the Association and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved apartment owner.

J. INSURANCE. The Board on behalf of the Association at its common expense shall at all times keep all buildings of the project insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Board as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interest and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time cause to be deposited promptly with the Trustees true copies of such insurance policies or current certificates thereof, without prejudice to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

1. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any apartment owner;

2. Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board, or any apartment owner or any other persons under either of them;

3. Provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, Trustees and every other person in interest who shall have requested such notice of the insurer;

4. Contain a waiver by the insurer of any right of subrogation to any right of the Board, Trustees or apartment owners against any of them or any other persons under either of them;

5. Contain a standard mortgagee clause which shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment or apartment lease of the project, in their respective order of preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, Trustees or apartment owners or any persons under any of them;

(c) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board. The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners with respect to the project and naming the Trustees as additional assureds, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$300,000.00 for injury to one person and \$1,000,000.00 for injury to more than one person in any one accident or occurrence and \$50,000.00 for property damage, and from time to time upon receipt thereof deposit promptly with the Trustees current certificates

of such insurance, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

K. CONDEMNATION. In case at any time or times the project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of any land shall be payable to and be the sole property of the Trustees, and all compensation and damages for or on account of any improvements of the project shall be payable to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as herein provided unless such restoration or replacement is impractical in the circumstances. Unless such restoration or replacement is undertaken within a reasonable time after such taking or condemnation, the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good orderly condition and even grade.

L. UNINSURED CASUALTY. In case at any time or times any improvements of the project (excluding additions and alterations constructed or made by apartment owners pursuant to the provisions of the By-Laws and/or this Declaration) shall be substantially damaged or destroyed by any casualty not herein required to be insured against, the decision to rebuild, repair or restore such improvements shall require an affirmative vote of seventy-five percent (75%) of the apartment owners. Any such approved restoration of the common elements shall be completed diligently by the Association at its common expense, and the apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed according to the original plans and elevation thereof, or such other plan first approved as provided herein. Unless such restoration is undertaken within a reasonable time after

such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade. (See Endnote 7)

M. ALTERATION OF PROJECT. No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the written approval of the Trustees and the consent of seventy-five percent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained; provided that non-material structural additions to the common elements, including, without limitation, the installation of solar energy devices as defined by Hawaii Revised Statutes, Section 468B-1, or additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of such apartment shall require written approval only by the Trustees and the Board of Directors. "Non-material structural additions to the common elements," as used herein, shall mean a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any non-consenting owner of the use or enjoyment of any part of property, or directly affect any non-consenting owner, as defined in Hawaii Revised Statutes, Section 514A-89, as the same may be amended from time to time.

The Trustees and the Board of Directors shall have the authority to withhold approval of any such additions or alterations, at its discretion, on aesthetic grounds, to preserve the uniform appearance of the project, or for any other reason, provided that such approval shall not be unreasonably withheld. Furthermore, the Trustees and the Board of Directors may impose reasonable conditions upon their approval of any



apartment owner's request to make additions or improvements, and may withhold approval unless the owner making such request strictly complies with all such conditions. Such conditions may include, but shall not be limited to, the following:

(a) That the apartment owner provide specifications and plans prepared by a licensed architect for the proposed additions and alterations, including a detailed plot plan, if requested, at such apartment owner's expense.

(b) That the apartment owner agree to submit the aforementioned plans and specifications to the Trustees and to an engineer or other expert selected by the Board of Directors for review and approval at the apartment owner's expense.

(c) That upon the request of the Trustees or the Board of Directors, the apartment owner shall procure and deposit with the Trustees a performance bond and labor and material payment bond naming as obligees the Trustees and collectively all other apartment owners as their interests may appear in a penal sum not less than one hundred percent (100%) of the cost of such construction, with a corporate surety authorized to do business in Hawaii, and in a form deemed satisfactory to the Trustees and the Board of Directors. The apartment owner shall provide the Trustees and the Board of Directors with written evidence of the apartment owner's compliance with this condition before the commencement of any construction.

(d) That the apartment owner agree to an inspection of the proposed improvements during the course of construction and/or following completion of construction, by an engineer or other expert selected by the Board of Directors, at such apartment owner's expense.

(e) That the apartment owner execute an indemnification agreement in favor of the Trustees and the Association and bear any legal fees, recordation or other expense incurred in relation thereto.

(f) That the apartment owner comply with all requirements under any existing code, ordinance, or statute.

Solar water heaters installed by apartment owners in accordance with the provisions of the amendment to this Declaration and the By-Laws dated March 23, 1981 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 1 5501, Page 478, shall be deemed to be governed by the provisions of the aforesaid amendment as if such amendment had not been deleted and replaced by the provisions herein. (See Endnote 8)

M.1. ALTERATIONS BY DISABLED OCCUPANTS. Regardless of anything to the contrary in this Declaration, the By-Laws, or the House Rules, disabled occupants shall: (1) be permitted to make reasonable modifications to their apartments and/or the common elements, at their expense, if the modifications are necessary to enable them to use and enjoy their apartments and/or the common elements; provided that any disabled occupant wishing to make modifications or to obtain an exemption first submits a written request to the Board, and the Board consents in writing to the request. The request must state in detail the nature of the request and the reason that the disabled occupant needs to make modifications or to be granted an exemption. The Board shall not unreasonably withhold or delay its consent to the request, and any request shall be deemed to be granted if the Board does not respond in writing, within forty-five (45) days of the Board's receipt of the request. The Board may condition its consent upon the disabled occupant complying with the following conditions:

1. The disabled occupant must provide plans and specifications, including detailed plot plans, if requested, at the disabled occupant's expense;
2. The disabled occupant must agree to, if necessary, submit the plans and specifications to an engineer or other expert selected by the board for review and approval, at the disabled occupant's expense;
3. The disabled occupant must agree to, if necessary, an inspection of the proposed additions or alterations during the course of construction and/or following completion of construction, by an engineer or other expert selected by the Board at the disabled occupant's expense;

4. The disabled occupant must strictly comply with all applicable laws, ordinances, and regulations of any governmental entity; and

5. The disabled occupant must obtain any necessary building permits, at the disabled occupant's expense. (See Endnote 9)

N. MAINTENANCE RESERVE FUND. In compliance with Chapter 514A, Hawaii Revised Statutes, the Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all apartment owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each apartment owner's obligations to provide for utilities, insurance, maintenance, and repair of the common elements and other expenses of administration of the project, which shall be deemed conclusively to be a common expense of the project. The Board may include reserves for contingencies in such assessments, and such assessments may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each apartment owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners in their respective proportionate shares except for the owners of any apartments then reconstituted as a new condominium property regime. (See Endnote 10)

O. AMENDMENT OF DECLARATION. Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by written consent or affirmative vote of seventy-five per cent (75%) of the apartment owners, and shall be effective only upon the recording of an instrument setting forth such amendment and vote duly executed by such owners or by the proper officers of the Association; provided, however, that Trustees and Lessee reserved the right to

amend this Declaration without the consent or joinder of persons then owning or leasing the apartment units described herein by filing an amendment to this Declaration pursuant to the provisions of section 514-13, Hawaii Revised Statutes, after completion of the building described herein by attaching to such amendment of verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built. (See Endnote 11)

P. DEFINITIONS. The terms "majority" or majority of apartment owners herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

IN WITNESS WHEREOF, the undersigned have executed this Restated Declaration this 11th day of October, 2000

ASSOCIATION OF APARTMENT OWNERS  
OF TROPICANA VILLAGE-AIEA, PHASE 2&3

By [Signature]  
Print Name: GEE EBANA

Its GEE Vice Pres.  
(Please Print)

By [Signature]  
Print Name: DON LEE

Its TREASURER  
(Please Print)

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

On this 11th day of October, 2000, before me appeared Gee Ebana, to me personally known, who, being by me duly sworn, did say that ~~he~~ <sup>she</sup> is the Vice President of the ASSOCIATION OF APARTMENT OWNERS OF TROPICANA VILLAGE-AIEA, PHASE 2 and 3, an unincorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said Gee Ebana acknowledged that ~~he~~ <sup>she</sup> executed said instrument as the free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF TROPICANA VILLAGE-AIEA, PHASE 2 and 3.



Print Name: Annie C. Kekoolani  
Notary Public, State of Hawaii

My Commission Expires: 02-16-2002

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 11th day of October, 2000, before me appeared Don Lee; to me personally known, who, being by me duly sworn, did say that he/~~she~~ is the Treasurer of the ASSOCIATION OF APARTMENT OWNERS OF TROPICANA VILLAGE-AIEA, PHASE 2 and 3, an unincorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said Don Lee acknowledged that he/~~she~~ executed said instrument as the free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF TROPICANA VILLAGE-AIEA, PHASE 2 and 3.



Print Name: Annie C. Kekoolani  
Notary Public, State of Hawaii

My Commission Expires: 02-16-2002

## ENDNOTES

The following endnotes correspond to provisions in the Declaration of Horizontal Property Regime of Tropicana Village-Aiea, Phase 2 and 3, as restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the project's declaration. This restatement was made solely for purposes of information and convenience. The restated declaration of condominium property regime correctly states without change the corresponding provisions of the original declaration, as amended, and supersedes the original declaration and all prior amendments to it. In the event of a conflict, the restated declaration shall be subordinate to the original declaration, amendments and cited statutes.

1. Throughout this restatement, references to "horizontal" property regime and "horizontal" property act have been changed by substituting "condominium" for "horizontal" in accordance with Act 65 (SLH 1988).

2. Section E was amended by the Amendment of Declaration of Horizontal Property Regime of Tropicana Village-Aiea, Phase 2 and 3 dated March 23, 1981 and recorded in the Bureau of Conveyances in liber 15501, page 478.

3. Section F has been amended to reflect that the Bylaws are no longer attached to and recorded as part of the Declaration but are now recorded separately.

4. Section F.4. has been amended to include a reference to Paragraph M.1, which was added to conform to the requirements of the Fair Housing Amendments Act, as amended (42 U.S.C. Section 3601, et seq.) relating to alterations by disabled owners and residents.

5. Section F.6. has been amended for the same reason. It was also was amended by the Amendment of Declaration of Horizontal Property Regime and Bylaws of Tropicana Village-Aiea, Phase 2 and 3 dated March 27, 1986 and recorded in the Bureau of Conveyances in Liber 19467, page 514 (the "1986 Amendment") to eliminate the owner approval requirement from Section F.6.

6. Section H. was amended by the 1986 Amendment to indicate that the costs to repair and maintain additions and alterations by owners is not a common expense.

7. Section L was amended by the 1986 Amendment to indicate that additions and alterations by apartment owners do not have to be insured by the Association.

8. Section M was amended by the 1986 Amendment to revise requirements for alteration of the project and the apartments.

9. Paragraph M.1. has been added to provide a clear statement that disabled owners and residents will be permitted to make all alterations and additions to their apartment and the Project authorized by the Fair Housing Amendments Act and Chapter 515, Hawaii Revised Statutes.

10. Section N. has been amended by a reference to the budgeting and reserve requirements of Chapter 514A created by Section 514A-83.6, Hawaii Revised Statutes.

11. Section O of the Declaration was amended to include the change made by Section 514A-11 permitting amendments to the declaration be made by written consent, without a meeting, as well as by a vote at a meeting. Note that the as-built plans were filed in conjunction with the First Amendment of Declaration of Horizontal Property Regime recorded in liber 7585, page 226 and dated May 25, 1971.