

RECORDATION REQUESTED BY:
Kamehameha Schools/Bishop Estate
P. O. Box 3466
Honolulu, Hawai'i 96801

87- 28468

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
RECORDATION

AFTER RECORDATION, RETURN TO:
Kamehameha Schools/Bishop Estate

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RETURN BY: MAIL () PICKUP (X)

DECLARATION OF PROTECTIVE PROVISIONS

WHEREAS, the TRUSTEES OF THE ESTATE OF BERNICE PAUAAHI BISHOP, whose principal place of business and post office address is 567 South King Street, Suite 200, Honolulu, Hawaii, hereinafter called the "Declarant," own in fee simple the real property situated at Maunalua, City and County of Honolulu, State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Residential Lots within the area described in Exhibit "A" are currently leased to various persons by means of residential lot leases; and

WHEREAS, Declarant proposes to offer to sell and convey its fee simple interest in the Residential Lots to the present holder of, or to the purchaser under an agreement of sale from the present holder of, the residential lease demising each of the Residential Lots; and

WHEREAS, Declarant is desirous of maintaining the residential character of the residential area and of providing for the preservation of the values and amenities of said area and to preserve the area as an attractive residential district for the advantage of the residents of the district and the community at large, and, to this end, Declarant desires to subject the Residential Lots to the declarations hereinafter set forth, each

Lease No. 26,466
Maunalua Triangle

and all of which is and are for the benefit of the Residential Lots within the residential area and each owner and Lessee of such Lots;

NOW, THEREFORE, Declarant hereby declares that each of the Residential Lots described in Exhibit "A" when hereafter sold by Deed or Agreement of Sale by Declarant or hereafter leased by Declarant shall thereafter be held, sold, conveyed, encumbered, leased, used, occupied and improved, subject to the following limitations, restrictions, covenants and conditions which are for the purpose of protecting, preserving and maintaining the value, desirability and attractiveness of the residential area, all for and in furtherance of preserving an attractive residential district for the advantage of the residents of the area and the community at large; provided, however, that the benefits and rights set forth in Article III of this Declaration shall be effective from and after the date hereof as to all lessees of Declarant under valid and existing leases of Residential Lots for a term of five (5) years or longer, whether they are lessees under leases of Residential Lots heretofore or hereafter made. The limitations, restrictions, covenants and conditions contained herein, as they now are or hereafter become effective as above provided, shall run with the Residential Lots, and shall be binding upon all parties having or acquiring any right, title or interest in and to any of the Residential Lots, and their respective personal representatives, heirs, successors and assigns, and shall inure to the benefit of Declarant and each owner and Lessee thereof as herein set forth. Except as otherwise provided in this

Declaration, the limitations, restrictions, covenants and conditions of this Declaration shall not apply to any Residential Lot so long as the lease from Declarant of the Residential Lot existing on the date hereof shall remain in full force and effect and title to said Residential Lot has not been sold by Declarant by Deed or Agreement of Sale.

ARTICLE I

Definitions

Section 1: The following words when used in this Declaration (unless the context otherwise specifies or requires) shall have the following meanings:

(a) "Declarant" shall mean and refer to the Trustees of the Estate of Bernice Pauahi Bishop and their successors in trust.

(b) "Owner" shall mean and refer to the legal or equitable owner, whether one or more persons or entities, of all or any part of the fee simple interest in any Residential Lot, but excluding those having such interest merely as security for the performance or repayment of an obligation, and also specifically excluding Declarant.

(c) "Lessee" shall mean and refer to those persons who are the Lessees of record under a valid and existing lease of a Residential Lot from Declarant or from an owner for a term of five (5) years or longer, whether they are Lessees under a lease of a Residential Lot heretofore or hereafter made.

(d) "KAcor" shall mean and refer to KAcor Realty, Inc., a California corporation, whose principal place of business in Hawaii is 7120 Kalaniana'ole Highway, Honolulu, Hawaii and whose

mailing address is P.O. Box 25007, Honolulu, Hawaii 96825, and its successors.

(e) "Residential Lot" shall mean and refer to the individual residential parcels of real property described in Exhibit "A".

(f) "File Plan" shall mean and refer to the subdivision map filed by the number shown in the Bureau of Conveyances of Hawaii. Whenever in this Declaration a File Plan other than File Plan 1468 is indicated for a Residential Lot which is designated by a letter of the alphabet, either with or without a number (such as B or 57-A), such indication is informational only to show the general location of the Residential Lot.

(g) "Agreement of Sale" shall mean and refer to a contract or agreement, recorded in the Bureau of Conveyances of the State of Hawaii and/or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, whereby a seller has agreed to sell and a purchaser has agreed to buy the property that is the subject of the Agreement of Sale. The purchaser under an Agreement of Sale for the fee simple interest in a Residential Lot from Declarant shall be considered to have an equitable interest in the Residential Lot and shall be considered an "owner" as defined above. If Declarant forecloses on such an Agreement of Sale because of a default by the purchaser, the equitable interest of such purchaser shall cease upon such foreclosure.

ARTICLE II

Restrictions

Section 1. Use. All Residential Lots shall be occupied and used only for residential purposes and only one (1)

single-family dwelling (exclusive of outbuildings) shall be erected, placed, maintained or allowed on a Residential Lot. No building or structure on a Residential Lot shall be used as a tenement house, rooming house or apartment house or for or in connection with the carrying on of any business or trade whatsoever. No livestock, poultry or rabbits shall be kept on the premises.

Section 2. Subdivision and Consolidation. The existing Residential Lots shall not be further subdivided or consolidated and resubdivided so as to create any additional Residential Lots; provided, however, that the restrictions set forth in this Section 2 shall not apply to any subdivision, consolidation or resubdivision required to effect a public use or purpose, such as water and sewer line easements.

Section 3. Setback Lines. From and after the date on which the limitations, restrictions, covenants and conditions contained in this Declaration become effective as to any Residential Lot:

(a) No building shall be erected or placed between any street boundary of such Residential Lot and any setback line along such boundary as shown on any File Plan, or any other map attached to any lease made by Declarant existing on the date of this Declaration;

(b) The highest point of any new building (excluding chimneys) shall not exceed fifteen (15) feet above the highest existing ground elevation within the setback lines referred to in Section 3 herein;

(c) No structure whatsoever except approved fences or walls shall be erected or placed between such setback line and street boundary; and

(d) No hedge of a greater height than four feet from ground level shall be maintained between such setback line and street boundary.

Section 4. Repair and Maintenance. All buildings and improvements now or hereafter built on the Residential Lots shall at all times be well and substantially repaired and maintained.

Section 5. Landscaping. All Residential Lots, together with all adjacent land between any street boundary of such lot and the established curb line, shall at all times be landscaped and kept in a neat and attractive condition and all trees, shrubs and grass thereon shall be kept in good and neat condition.

Section 6. Antennas. No television or other antennas visible from any point outside of a Residential Lot shall be erected, placed or maintained on a Residential Lot.

Section 7. Roofing. Roof surfacing shall be non-reflective or non-glare producing. No asphalt composition shingles shall be used on any building or structure on a Residential Lot.

Section 8. Garages. Each Residential Lot shall have a minimum of one (two-car) carport.

Section 9. Clothes Lines, Etc. No laundry trays, clothes lines, domestic gas tanks, drying yards, auto repair or boat storage visible from any street shall be placed or maintained on any Residential Lot.

Section 10. Drainage Ditches and Water Courses.

All owners, or Lessees of Declarant or owners, will not in any way hinder or obstruct the drainage of storm waters from upper lands across the premises, nor change the location of any natural water courses or drainage ditches on the premises, nor concentrate the flow of storm waters from the premises except in such water courses and drainage ditches, and will at all times keep such water courses and drainage ditches free from any obstructions.

Section 11. Payment of Sewage Fees and Other Charges.

Each owner, or Lessee of Declarant or owner, shall be liable for all charges assessed against his Residential Lot for sewage disposal, electricity, gas, refuse collection, telephone, water or other utilities or services, whether made by governmental authority or public or community service company and whether assessed to Declarant, owner or Lessee.

Section 12. Boundary Wall. In case at any time or times any part of a Residential Lot listed below containing a boundary wall along Kalaniana'ole Highway is taken or condemned under the power or eminent domain, each owner, or Lessee of Declarant or owner, of such Residential Lot will promptly rebuild or cause to be rebuilt such wall along the new boundary thereby created substantially in the same design, height, thickness and materials as the original wall.

<u>Lots</u>	<u>File Plan</u>
2 to 12, inclusive	701
190 to 202, inclusive	701
205-A, 206-A, 206-B	701

Section 13. Private Driveway.

(a) Each owner, or Lessee of Declarant or owner, of the Residential Lot having the right to use a driveway over and across an adjoining Residential Lot, such Residential Lots being listed in this Subsection (a), shall at his own expense maintain and keep the driveway on such adjoining Residential Lot in good and safe repair, order and condition.

<u>Residential Lot with right to use</u>	<u>Residential Lot affected by driveway</u>	<u>File Plan</u>
48	49	750
31	30	956
35	34	956
36	37	956
39	38	956

(b) The owners, or the Lessees of Declarant or owners, of Residential Lots 83 and 84, as shown on File Plan 750, shall, in equal shares of the expense, construct, maintain and keep

the driveway within and along the common boundary of said Residential Lots in good and safe repair, order and condition.

(c) The owners, or the Lessees of Declarant or owners, of Residential Lots 41, 42 and 43, as shown on File Plan 956, shall, in equal shares of the expense, construct, maintain and keep the driveway on Residential Lots 41 and 42 in good and safe repair, order and condition.

Section 14. Sanitary Sewer Line. The owner, or the Lessee of Declarant or owner, of Residential Lot B will at his own expense, after any repairs to the sanitary sewer line within Easement "A" within adjoining Residential Lot A are completed, restore the surface of the ground above such sanitary sewer line to its original condition to the extent such restoration is reasonably possible. Lots A and B were created by the consolidation and resubdivision of Lots 12 and 13 of File Plan 750.

Section 15. Architectural Control. The Directors of the Maunaloa Triangle/Koko Kai Community Association shall appoint an Architectural Standards Committee composed of three or more members which shall establish Architectural and minimum Building Design Requirements and Guidelines ("Guidelines"). Lessees of Declarant or purchasers from Declarant under an Agreement of Sale shall submit preliminary and final plans to the Declarant for approval. All other owners of Residential Lots shall submit preliminary and final plans to the Architectural Standards Committee for approval as required by these sections. No building, fence, wall or a structure, nor any exterior addition, change or alteration to an existing structure shall be commenced, erected or maintained upon a Residential Lot, except in accordance with the Guidelines and approved plans and specifications, including a detailed plot plan, showing the nature,

kind, shape, height, materials and location of the structure, which shall be prepared by a licensed architect.

Section 16. Sightline. The Architectural Standards Committee may establish sightline provisions, in accordance with the Guidelines referred to in Section 15 of this Article II. Compliance with the Architectural Standards Committee's sight-line provisions is not a guarantee that maximum sight lines on lots having a view potential will be preserved or that each lot will have an unobstructed view channel or plane.

ARTICLE III

General Provisions

Section 1. Duration. The restrictive covenants set forth in Sections 10, 11 and 12 of Article II of this Declaration, and the provisions of Section 4 of this Article III, shall continue from the date of this Declaration and be deemed covenants running with the land. The restrictive covenants set forth in Sections 13 and 14 of Article II of this Declaration shall continue and remain in full force and effect as to each Residential Lot listed therein from the date on which they become effective as to such lot to and including the date on which the owners of all of the Residential Lots affected by any such covenant shall mutually cancel and terminate the same by the execution of an instrument setting forth such cancellation and termination and the recordation and/or filing of the same in each of the places in the State of Hawaii in which this Declaration has been recorded and/or filed of record. All other limitations, restrictions, covenants and conditions contained in this Declaration shall continue and remain in full force and effect as to each Residential Lot from the date on

which they become effective as to such lot to and including the date on which (a) the owners other than Declarant and (b) the lessees of Declarant, who together own or lease a total of seventy-five percent (75%) or more of the Residential Lots, shall cancel and terminate said limitations, restrictions, covenants and conditions (except as to Sections 10, 11 and 12 of Article II and Section 4 of Article III hereof) by the execution of an instrument or instruments setting forth such cancellation and termination and the recordation and/or filing of the same in each of the places in the State of Hawaii in which this Declaration has been recorded and/or filed of record. In the event any changes occur in the manner by which the Residential Lots described in Exhibit "A" are identified, Declarant reserves the right to file a supplemental declaration to clarify or specifically identify the Residential Lots which are subject to this Declaration.

Section 2. Enforcement. Declarant, KAcor, owners and the Lessees of Declarant or owners under valid and existing leases of Residential Lots for a term of five (5) years or longer, shall each have the right, but not the responsibility, to enforce any or all of the limitations, restrictions, covenants and conditions imposed by this Declaration by any proceeding at law or in equity against any person or persons violating or attempting to violate any such limitation, restriction, covenant or condition, and any judgment for any such violation may require all costs and expenses of such enforcement action, including a reasonable attorney's fee, to be paid by the person who the court finds in violation of any such limitation, restriction, covenant or condition. No failure by Declarant,

KAcor or any of the owners, or Lessees of Declarant or owners, to seek enforcement of the provisions of this Declaration shall entitle any owner, Lessee of Declarant or owner, KAcor or other person to bring or maintain any action or proceeding in law or equity against the Declarant, KAcor, owners, or Lessees of Declarant or owners, as a result of such failure.

Without limiting the generality of the foregoing, in the event any owner, or Lessee of Declarant or owner, shall fail to pay his share (including all) of the expense to repair, maintain or clear any drainage ditch, or water course, or boundary walls, or driveway, or sanitary sewer line, as the case may be, within 30 days after any one or more of the other owners or Lessees who have paid their share have requested him to do so, the unpaid share of the expense shall constitute a lien on the Residential Lot (or the interest of the defaulting owner therein) of the defaulting owner. Such lien shall be subject and subordinate to the lien of any first mortgage of record upon the Residential Lot of the defaulting owner, and the sale or transfer of the Residential Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payment of said share of the expense. Such lien may be foreclosed by suit by any one or more of the owners or Lessees who have paid their share of the expense in like manner as a mortgage of real property, and such owners or Lessees shall have power to bid on the Residential Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment of

the unpaid share of the expense shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of the obligation to pay a share of such expense.

Section 3. No Waiver. No failure to enforce the provisions of any limitation, restriction, covenant or condition of this Declaration shall constitute a waiver of any right by Declarant, KAcor, owner, or Lessee of Declarant or owner, to enforce any provision of this Declaration in another case against or with respect to the same owner or Lessee.

Section 4. Non-Liability of Declarant. Declarant shall have no responsibility or liability whatsoever for any injury, loss or damage to persons or property resulting from the Lots, facilities and improvements set forth in Sections 10 to 14, inclusive, of Article II hereof, nor for any repair, maintenance or clearance thereof.

Section 5. Severability. The limitations, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof or of any such limitation, restriction, covenant or condition shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, Declarant has executed these presents this 11th day of February, 1971.

Mignon B. Thompson
William O. Pugh
Richard H. Bishop
 Trustees of the Estate of Bernice
 Pauahi Bishop

APPROVED AS TO FORM
 CONTENTS AND AUTHORIZATION

Ward E. Stibilly
 BY THE NOTARY

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

On this 11th day of February, 1917, before
me personally appeared Myron B Thompson,
William S. Richardson and Matsuo Takabuki,
three of the Trustees of the Estate of Bernice Pauahi Bishop,
to me known to be the persons described in and who severally
executed the foregoing instrument, and acknowledged that they
executed the same as their free act and deed, as such Trustees.

W

LESLIE M. YAMASHITA
Notary Public, State of Hawaii
My commission expires Sept. 27, 1928

Leslie M. Yamashita
Notary Public, State of Hawaii
My Commission expires: _____

EXHIBIT "A"

All those certain parcels of land (part of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu) situate at Maunaloa, City and County of Honolulu, State of Hawaii, and comprising:

A. Maunaloa Triangle Subdivision, Unit 1.

1. Lots 2 to 13, inclusive, 15 to 77, inclusive, 80 to 205 inclusive, and 207 to 229, inclusive, as shown on File Plan 701 filed in the Bureau of Conveyances of Hawaii.

2. Lots 78-A and 79-A, being the consolidation and re-subdivision of Lots 78 and 79 of File Plan 701 filed in said Bureau.

3. Lots 206-A and 206-B, being the subdivision of Lot 206 of File Plan 701 filed in said Bureau.

B. Maunaloa Triangle - Bay View Subdivision, Unit 1-A.

Lots 230 and 231, 307, 308, 309, 109 to 117, inclusive, and Lots 180 and 181, as shown on File Plan 771 filed in said Bureau.

C. Maunaloa Triangle Subdivision, Unit II.

Lots 1 to 78, inclusive, as shown on File Plan 956 filed in said Bureau.

D. Maunaloa Bay View Lots Subdivision, Unit 1.

1. Lots 2, 3, 5 to 11, inclusive, 14, 17 to 22, inclusive, 24 to 108, inclusive, 37-A and 95-A as shown on File Plan 750 filed in said Bureau.

2. Lots A and B, being the consolidation and re-subdivision of Lots 12 and 13 of File Plan 750 filed in said Bureau.

3. Lots 15-A and 16-A, being the consolidation and re-subdivision of Lots 15 and 16 of File Plan 750 filed in said Bureau.

E. Koko-Kai 2, Maunaloa Bay View Lots Subdivision, Unit 2-B.

Lots 1 to 40, inclusive, 42 to 66, inclusive, as shown on File Plan 1123 filed in said Bureau.

F. Koko-Kai 2, Maunaloa Bay View Lots Subdivision, Unit 2-C.

Lots A to H, inclusive, as shown on File Plan 1468 filed in said Bureau.

G. May Way Subdivision, Unit 1-A.

Lots 1 and 2, as shown on File Plan 1494 filed in said Bureau.

Tax Map Keys

3-9-13-02 to 24
26 to 33

3-9-21-01 to 12
15 to 65

3-9-22-01 to 35

3-9-23-01 to 88

3-9-24-01 to 26
28 to 43
45 to 51

3-9-25-01 to 07
09 to 50
52 to 78

3-9-26-01
-03
-04
-06 to 41

3-9-27-01 to 33

3-9-28-01 to 18
20 to 24
26 to 48

3-9-35-15
-19

3-9-69-01 to 42