

RECORDATION REQUESTED BY:

85-102941

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
RECORDS SECTION

DATE: \_\_\_\_\_

AFTER RECORDATION, RETURN TO:

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RECORDED BY: \_\_\_\_\_

MAIL ROOM

RETURN BY: MAIL ( ) PICKUP (X)

DECLARATION OF PROTECTIVE PROVISIONS

WHEREAS, the TRUSTEES OF THE ESTATE OF BERNICE PAUHAH 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 Waialae-iki and Wailupe, 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 or will be leased to various persons by means of residential lot leases; and

WHEREAS, Declarant proposes to offer to sell and convey (a) 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 (b) undivided interests in its Roadway Lots hereinafter described together with the Residential Lot which are served by the Roadway 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 Lots to the declarations hereinafter set forth, each and all of which is and are for the benefit of the Lots and each owner and lessee of such Lots.

NOW, THEREFORE, Declarant hereby declares that each of the Lots within the area 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 Lots, and shall be binding upon all parties having or acquiring any right, title or interest in and to any of the 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 within the Residential Area, but excluding those having such interest merely as security for the performance or repayment of an obligation, and also specifically excluding Declarant.

(c) "Residential Area" shall mean and refer to the area described in Exhibit "A".

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

(e) "Roadway Lots" shall mean and refer to the Roadway Lots described in Exhibit "A".

(f) "File Plan" shall mean and refer to the subdivision map filed by the number shown in Bureau of Conveyances of Hawaii. Whenever in this Declaration a File Plan is indicated for a Residential Lot or Roadway 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 such Lot.

(g) "Lots" shall mean and refer to the Residential Lots and the Roadway Lots.

(h) "Agreement of Sale" shall mean and refer to a contract or agreement, recorded in said Bureau 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. The Roadway Lots shall be used solely for roadway and utility purposes.

Section 2. Subdivision and Consolidation. The existing 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, nor to the reservation set forth in Section 14 of this Article II.

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, no building shall be erected or placed between any street boundary of such Residential Lot and any setback line along such boundary either (a) as set forth in the Building Requirements identified in Section 7 of this Article II, or (b) if said Building Requirements shall not be applicable to such Residential Lot, as shall from time to time be established by any governmental authority having jurisdiction.

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. No Shopping Center Use. Except for such Residential Lots as may from time to time be owned by Declarant, none of the Residential Lots may be occupied or used for or in connection with the development or use as a shopping center from the date hereof to and including June 30, 2025.

Section 7. Building Requirements. All Residential Lots described in paragraph C of Exhibit A, being Waialae-iki View Lots, Unit III, are subject to those certain Building Requirements recorded in the Bureau of Conveyances of Hawaii in Liber 7392, page 368, and to Supplemental Building Requirements recorded in said Bureau in Liber 18922, page 1. All Residential Lots described in paragraph D of Exhibit A, being Waialae-iki View Lots, Unit IV, are subject to those certain Building Requirements recorded in said Bureau in Liber 10231, page 436, as amended by that certain instrument recorded in said Bureau in Liber 11303, page 171, and to said Supplemental Building Requirements. All buildings and improvements, and all landscaping, now or hereafter existing on such Residential Lots shall be built, placed and maintained only in accordance with the provisions of said Building Requirements and Supplemental Building Requirements. In the event of any conflict between any provision of this Article II and any provision of said Building Requirements, as amended, or Supplemental Building Requirements, the provision of the latter shall control.

Section 8. Drainage Ditches. All owners, or lessees of Declarant or owners, of Residential Lots affected or served by any drainage easement listed below shall at all times maintain and keep the existing drainage ditch therein in good repair, order and condition, and maintain and keep said ditch free from obstructions and debris of any kind whatsoever.

<u>Easement</u>	<u>Lot(s)</u>	<u>File Plan</u>
"B"	1	739
48	54, 55, 56, 57-A, C, 59 to 63, inclusive	749
49	67, 68, 69, C, E	749
50	69 to 76, inclusive	749
unnumbered	C, D, E	749

Section 9. Roadway Lots. All owners, or lessees of Declarant or owners, of the Residential Lots served by the Roadway Lots listed below shall, in equal shares of the expense with the other owners or lessees of other Residential Lots served by the same Roadway Lot, maintain and keep the roadway and all other authorized construction on such Roadway Lot in good and safe repair, order and condition.

<u>Roadway Lot</u>	<u>Residential Lots</u>	<u>File Plan</u>
F-1	A-1, B, C, D, E	749
182	145 and 149	1140
183	170, 173 and 175	"
184	166 and 168	"
195	246 and 248	"
269	10 and 11	"
270	17 and 18	"
271	41 and 43	"
272	80, 82 and 84	"
273	72 and 75	"
274	106 and 107	"
275	110 and 113	"
276	131 and 133	"
277	136, 137 and 138	"
278	150 and 153	"

Section 10. Refuse Container Enclosures.

(a) All owners, or lessees of Declarant or owners, of Residential Lots 10, 11, 17, 18, 41, 43, 72, 75, 106, 107, 110, 113, 131, 133, 145, 149, 150, 153, 164, 166, 168, 246, and 248, as shown on File Plan 1140, shall, at their own expense, maintain and keep in good and safe repair, order and condition the refuse container enclosure which is on the Roadway Lot serving their respective Residential Lot and which has been assigned to that Residential Lot, except that the refuse container enclosure for Residential Lot 164 is on that Lot and not on a Roadway Lot.

(b) All owners, or lessees of Declarant or owners, of the Residential Lots served by the Roadway Lots listed in this Subsection (b) shall, in equal shares of the expense with the other owners or lessees of other Residential Lots served by the same Roadway Lot (except that Residential Lot D of the File Plan 749 need

not share in such expense), maintain and keep the refuse container enclosure or enclosures on such Roadway Lot in good and safe repair, order and condition.

<u>Roadway Lot</u>	<u>Residential Lots</u>	<u>File Plan</u>
F-1	A-1, B, C, E	749
183	170, 173, 175	1140
272	80, 82, 84	1140
277	136, 137, 138	1140

Section 11. Private Driveway

(a) The owners, or the lessees 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>
C	B	749
175	205	1140

(b) The owners, or the lessees of Declarant or owners, of Residential Lots 32 and 33, as shown on File Plan 1405, shall, in equal shares of the expense, construct, maintain and keep the driveways on Easement "A" affecting Residential Lot 32 and Easement "B" affecting Residential Lot 33 in good and safe repair, order and condition.

Section 12. Sanitary Sewer Line. The owner, or the lessee of Declarant or owner, of Residential Lot E, File Plan 749, shall at his own expense renew, maintain and keep the private sanitary sewer line under and across the Northeasterly portion of adjoining Residential Lot C in good order, repair and condition.

Section 13. Retaining Wall.

(a) Lots 172 and 173, File Plan 749. The owner, or the lessee of Declarant or owner, of Residential Lot 173 of File Plan 749 shall, in respect to the retaining wall under, over and across a portion of adjoining Residential

Lot 172, fully and faithfully perform the provisions of paragraphs II C and IV of that certain Agreement dated February 27, 1968, recorded in said Bureau in Liber 6010, page 147.

(b) Lots 38 and 39, File Plan 1405. The owner, or the lessee of Declarant or owner, of Residential Lot 38 of File Plan 1405 shall, in respect to the retaining wall under, over and across a portion of adjoining Residential Lot 39, fully and faithfully perform the provisions of paragraphs 1 and 2 on page 4 and paragraph 4 on page 6 of that certain Grant of Easement and Agreement dated February 24, 1983, recorded in said Bureau in Liber 16,929, page 548.

Section 14. Laukahi Park. In the event Declarant acquires fee simple title to "Laukahi Park", being Lot 202, area 145,505 square feet, as shown on File Plan 1140, Declarant shall have the right, but not the obligation, to subdivide said lot into Residential Lots and, if desirable, a Roadway Lot or Lots and, at Declarant's option, to add all or part of the same to the Lots covered by this declaration.

ARTICLE III

General Provisions

Section 1. Duration. The restrictive covenant set forth in Section 6 of Article II of this Declaration shall continue from the date hereof to and including June 30, 2025. The restrictive covenants set forth in Sections 7, 8, 9, 10 and 14 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 11, 12 and 13 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 both of the Residential Lots affected by 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 6 to 13, inclusive, 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.

Section 2. Enforcement. Declarant, 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, 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, or other person, to bring or maintain any action or proceeding in law or equity against the Declarant, 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 Roadway Lot, or refuse container enclosure, or driveway, or sanitary sewer line, or retaining wall, 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 the 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, owner, or lessee of Declarant or owner, to enforce any provisions 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 Section 7 to 13 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 9th day of September, 1915.

Myron B. Thompson  
William S. Richardson  
Richard Lyman, Jr.  
Trustees of the Estate of  
Bernice Pauahi Bishop

APPROVED AS TO FORM  
CONTENTS AND AUTHORIZATION  
Dean H. McMillin  
DOCUMENTARY DEPARTMENT

STATE OF HAWAII )  
City and County of Honolulu ) ss.

On this 9th day of September, 1915, before me personally appeared Myron B Thompson, William S. Richardson and Richard Lyman, Jr., 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 severally acknowledged that they executed the same as their free act and deed as such Trustees.

W  
LESLIE M. TAKUMI  
Notary Public, State of Hawaii  
My commission expires Sept. 27, 1922

Leslie M. Takumi  
NOTARY PUBLIC, State of Hawaii

My commission expires:

EXHIBIT A

ALL those certain parcels of land situate at Waialae-iki (part of R. P. 3578, L. C. Av. 10613, Ap. 3 to A. Paki) and Wailupe (portion of Land Court Consolidation 108), City and County of Honolulu, State of Hawaii, and comprising:

## I. Residential Lots

## A. Waialae-iki View Lots, Unit II.

1. Lots 1 to 56, inclusive, 59 to 63, inclusive, 67 to 84, inclusive, and 87 to 223, inclusive, as shown on File Plan 749 filed in the Bureau of Conveyances of Hawaii.
2. Lots 57-A and 58-A, being the consolidation and resubdivision of Lots 57 and 58 of said File Plan 749.
3. Lots A-1, B, C, D and E, being the consolidation and resubdivision of Lots 64, 65 and 66 of said File Plan 749.
4. Lots 85-A and 86-A, being the consolidation and resubdivision of Lots 85 and 86 of said File Plan 749.

## B. Waialae-iki View Lots, Unit II-A.

Lots 1 to 8, inclusive, as shown on File Plan 739 filed in said Bureau.

## C. Waialae-iki View Lots, Unit III.

1. Lots 1 to 122, inclusive, 125 to 181, inclusive, 185 to 190, inclusive, 193, 194, 196 to 201, inclusive, and 203 to 268, inclusive, as shown on File Plan 1140 filed in said Bureau.
2. Lots 123-A and 124-A, being the consolidation and resubdivision of Lots 123 and 124 of said File Plan 1140.
3. Lots 191-A and 192-A, being the consolidation and resubdivision of Lots 191 and 192 of said File Plan 1140.

D. Waiialae-iki View Lots, Unit IV.

1. Lots 1 to 99, inclusive, 101 to 105, inclusive, 107, 108, 113 to 126, inclusive, as shown on File Plan 1405 filed in said Bureau.
2. Lots 100-A and 106-A, being the consolidation and resubdivision of Lots 100 and 106 of said File Plan 1405.
3. Lots A and B, being the consolidation and resubdivision of Lots 109 and 110 of said File Plan 1405.
4. Lots 111-A and 112-A, being the consolidation and resubdivision of Lots 111 and 112 of said File Plan 1405.

E. Waiialae View Estates - Unit 1.

1. Lots 1 to 12, inclusive, as shown on File Plan 1028 filed in said Bureau.
2. Lots 77, 78, 80 and 81, as shown on Map 1 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation 108, and being all of the lands described in Owners' Transfer Certificate of Title No. 140,773.

II. Roadway Lots

- A. Lots 182, 183, 184, 195, and 269 to 278, inclusive, as shown on said File Plan 1140.
- B. Lot F-1

ALL that certain parcel of land situate at Waiialae-iki, City and County of Honolulu, State of Hawaii, containing an area of 3,538 square feet and comprising Lot F-1 (being portions of the consolidation and resubdivision of Lots 65 and 66 of said File Plan 749), and being more particularly described as follows:

Beginning at the Northwest corner of this lot, the Northeast corner of Lot A-1, and on the Southerly side of Laamia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Leahi" being 6895.17 feet North and 16,324.25 feet East, and running thence by azimuths measured clockwise from true South:

- Along the Southerly side of Laamia Street on a curve to the right with a radius of 478.00 feet, the chord azimuth and distance being
- |     |      |     |       |        |   |
|-----|------|-----|-------|--------|---|
| 1.  | 273° | 09' | 34"   | 46.37  | feet;   |
|     |      |     |       |        | Thence on a curve to the left with a radius of 10.00 feet along Lot D, the chord azimuth and distance being   |
| 2.  | 42°  | 40' | 41"   | 16.03  | feet;   |
| 3.  | 349° | 25' |       | 122.35 | feet along Lot D;   |
|     |      |     |       |        | Thence on a curve to the left with a radius of 50.00 feet along same, the chord azimuth and distance being    |
| 4.  | 329° | 23' | 15"   | 34.25  | feet;   |
| 5.  | 39°  | 21' | 30"   | 16.00  | feet along Lot E;   |
|     |      |     |       |        | Thence on a curve to the left with a radius of 20.00 feet along Lot C, the chord azimuth and distance being   |
| 6.  | 87°  | 41' | 47.5" | 26.59  | feet;   |
| 7.  | 149° | 23' | 15"   | 20.00  | feet along Lot B;   |
|     |      |     |       |        | Thence on a curve to the left with a radius of 20.00 feet along same, the chord azimuth and distance being    |
| 8.  | 211° | 04' | 42.5" | 26.59  | feet;   |
| 9.  | 169° | 25' |       | 123.33 | feet along Lots B and A-1;  |
|     |      |     |       |        | Thence on a curve to the left with a radius of 20.00 feet along Lot A-1, the chord azimuth and distance being |
| 10. | 159° | 44' | 10"   | 6.73   | feet;   |
| 11. | 79°  | 25' |       | 10.92  | feet along Lot A-1;   |
|     |      |     |       |        | Thence on a curve to the right with a radius of 5.50 feet along same, the chord azimuth and distance being    |
| 12. | 129° | 48' | 53"   | 8.48   | feet;   |
| 13. | 180° | 22' | 46"   | 6.58   | feet along Lot A-1 to the point of beginning.   |

*[Handwritten signature]*  
 18936-136