

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

Including

CHARTER OF INCORPORATION AND BY-LAWS

OF

LEILANI COMMUNITY ASSOCIATION

<p>RECORDATION REQUESTED BY:</p> <p>AFTER RECORDATION, RETURN TO: FIRST HAWAIIAN BANK Attn: Mrs. Marsland</p> <p>RETURN BY MAIL</p>	<p>Certified copy, of the original document recorded at the Office of Bureau of Conveyances, State of Hawaii, on the 19th day of March, 1969; at 9:16 a.m., in Liber 6446, on pages 9-59.</p> <p>TITLE GUARANTY OF HAWAII, INC.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

A PORTION OF

LEILANI ESTATES

Hilo, Hawaii

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Including

CHARTER OF INCORPORATION

and

BY-LAWS

Of

LEILANI COMMUNITY ASSOCIATION

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

FIRST HAWAIIAN BANK

Attn: Mr. Marsland

RETURN BY MAIL () PICKUP (X)
REQUESTOR TO FILL ABOVE SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

In accordance with the provisions of Section 343-21,
Revised Laws Hawaii, 1955, as amended, this page is
attached to that certain instrument dated:

March 14, 1969 BETWEEN; _____

_____ FIRST HAWAIIAN BANK

_____ PUNA SUGAR COMPANY, LTD.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FIRST HAWAIIAN BANK, duly authorized and qualified to do business in the State of Hawaii, having its principal business address and its post office address at 161 South King Street, P.O. Box 3200, Honolulu, Hawaii 96801, hereinafter called "Declarant," is the Trustee under that certain unrecorded Trust Agreement dated December 6, 1968, by and among the FIRST NATIONAL BANK OF HAWAII, as Trustee, PUNA SUGAR COMPANY, LTD., as First Beneficiary, CHIAKI MATSUO, as Second Beneficiary, and LEILANI DEVELOPMENT, as Third Beneficiary, of those certain parcels of land situated in the Puna District, County and State of Hawaii, described as follows:

See Exhibit "C"

Declarant desires to establish covenants, conditions and restrictions relative to the use of said land in order to create a more desirable subdivision.

THEREFORE, Declarant hereby declares on this 14th day of March, 1969, that each of said lots described above shall be subject to the following covenants, conditions and restrictions:

1. ARCHITECTURAL COMMITTEE. Before any building, garage, wall, fence or any other improvement (hereinafter collectively referred to as "improvement") is constructed or maintained upon the lots or any alteration made thereto, a duplicate set of plans and specifications relating to said construction work shall be submitted to a committee to be known as the ARCHITECTURAL COMMITTEE. Such Committee shall consist of the following persons: HAYDN PHILLIPS, KENNETH B. GRIFFIN and MICHAEL LA PLANTE.

The Declarant, its successors and assigns, for a period of two (2) years from and after the date hereof, shall have full power to make appointments from time to time, to fill any vacancy in the membership of said Committee and any two (2) members of said Committee shall have the right of removal of the other member of said Committee at any time. Thereafter, the said power shall be exercised by the COMMUNITY ASSOCIATION hereinafter mentioned.

No improvement of any kind shall be constructed upon any of said lots until the plans and specifications therefore, and location of said improvement on the lot or lots have been approved in writing by at least two members of said Committee, which approval shall not be unreasonably withheld. One set of such plans and specifications will be kept by the Architectural Committee. Any such improvements on which construction is commenced shall be completed in a prompt and expeditious manner; provided, however, that neither the Declarant, its successors or assigns, the Community

Association, nor any member of said Committee shall be responsible for any structural defects in said plans or specifications, nor in any improvement constructed in accordance with such plans and specifications. In the event said Committee fails to approve or disapprove such plans and specifications and location within 30 days after said plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the construction or the maintenance of such improvement has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.

In the event of any dispute between Declarant and any one or more owners or between any two or more owners of any interest, legal or equitable, in any lot as to whether any use or proposed use complies with the conditions hereof relating to the use of the property, the same shall be submitted to the Architectural Committee whose decision with respect thereto shall be final.

The powers and duties of such Committee and its designated representatives shall cease on and after December 31, 1988. Thereafter the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of said lots and duly recorded appointing a representative or representatives, who shall thereafter exercise the same powers previously exercised by said Committee.

(1. ARCHITECTURAL COMMITTEE. Certificate Of Extension Of The Architectural Committee Of The Leilani Community Association. Liber/Page 23129/783 Recorded May 1, 1989).

2. SINGLE FAMILY RESIDENCE. All of the lots shall be used only for single family resident (hereinafter referred to as "residence") and purposes incidental thereto, one such residence only being permitted on each such lot.

3. GARAGE. Every residence shall have a minimum of a 2 car-garage or a 2-car carport, which shall be considered part of the residence.

4. MINIMUM SIZE. No residence shall be constructed which contains less than 800 square feet of ground floor space, exclusive of porches, lanai and garages.

5. HEIGHT. No improvements shall be constructed that will exceed 18 feet in height from the highest point of the land within the perimeter of the structure.

(5. HEIGHT. Residences and other structures built on lots must be built so that the highest point in elevation of the structure must be 18 feet or lower from the highest point of land in elevation on that lot. (No. 92-115 Findings Of Fact, Conclusions Of Law, Order Granting Motion For Partial Summary Judgment and Judgment Recorded June 10, 1993).

6. TEMPORARY OR SEPARATE IMPROVEMENTS. No trailer, mobile home, tent, shack, garage or other outbuilding shall be constructed prior to or during construction of a residence.

7. NUISANCE. No noxious or offensive activity shall be carried on upon any of said lots, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

8. MATERIALS. All materials used in the construction of any improvement upon any portion of the lots shall be new materials except that used decorative or structural materials may be used to enhance the appearance of the improvement.

9. FOUNDATIONS. No conventional subfloor framing shall be exposed from any side of any residence. All subfloor framing shall be concealed in a manner acceptable to the Architectural Committee.

10. DRIVEWAYS. Driveways shall be a minimum of 12 feet wide at the street and shall be paved during or prior to completion of a residence.

(10. DRIVEWAYS. Driveway is area between a lot owner's home and the boundary line adjacent to the roadway, the term "paved" allows the use of any smooth surface. (Civil No. 6865 Findings of Fact, Conclusions Of Law And Judgement Recorded September 28, 1982).

11. ROOFS. Cedar shakes, cedar shingles or clay tiles or metal shall be among approved roofing materials.

12. ANIMALS. Only dogs, cats or other household pets may be kept on any of said lots, provided that they are not kept, bred or maintained for any commercial purpose and are otherwise kept in accordance with zoning ordinances, rules and regulations otherwise applicable to urban land use.

13. SIGNS. No sign of any kind shall be displayed to the public view on any of said lots except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

14. RUBBISH AND TRASH. None of the lots shall be used or maintained as a dumping ground for discarded or old vehicles, rubbish, trash, garbage or other waste. No such material shall be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

15. ALL CONVEYANCES SUBJECT HERETO. All deeds, mortgages, agreements of sale, leases, or other conveyances made or delivered by any legal or equitable owner of any lot or interest therein shall be subject to the same covenants, conditions and restrictions as in this Declaration set forth whether expressly contained in such conveyance, mortgage or lease or not. Notwithstanding the foregoing, every such deed, mortgage, agreement of sale, lease or other conveyance shall contain the following provisions:

“Subject, however, to each and all of the covenants, conditions and restrictions contained in that certain Declaration of Covenants, Conditions and Restrictions, dated _____, and filed in the Bureau of Conveyances of the State of Hawaii in _____.”

“Subject further, however, to the proviso that no commercial purpose involving the keeping or raising of cattle, hogs, or other livestock will be maintained on the above described premises and that no noxious industry will be permitted to be operated on said premises; and that this covenant will run with the land and jurisdiction may be taken in equity at the suit of the Grantor, or the Community Association, or any owner, and their respective successors and assigns, to restrain by injunction any violation or threatened violation of this covenant.

16. BUILDING PERMIT. No work shall be commenced on the construction of any improvement until a building permit has been obtained from the Building Department of the County of Hawaii as required by law or ordinance.

17. COMMUNITY ASSOCIATION. Each owner (defined below) shall be member of the LEILANI COMMUNITY ASSOCIATION, hereafter referred to as the “Association,” a Hawaii nonprofit corporation.

Each owner shall be a member of the Association and entitled to all the benefits and rights as a member whether or not a certificate of membership has been issued. The right of membership of each owner in the Association and to the beneficial use of the streets or roadways as referred to below shall be appurtenant to each lot.

Each owner accepts and agrees to abide and be bound by the terms and provisions of the Charter and By-Laws of the Association, copies of which are attached hereto as Exhibit “A” and “B” respectively, and are herein incorporated by reference, and amendments thereto; provided, however, that such terms and conditions of the Charter and By-Laws of the Association, and amendments thereto shall not conflict with or be inconsistent with this Declaration and in the event of any such conflict, the provisions hereof shall prevail.

Any assessment imposed against any owner as provided in the By-Laws of the Association shall constitute a lien upon his lot or lots in favor of the Association and such lien may be enforced by suit for money judgment or may be foreclosed by the Association in the same manner as a real estate mortgage may be foreclosed, provided that no action shall be brought to foreclose such lien unless ninety (90) days' written notice thereof shall be mailed to the delinquent member of the Association, and provided further that the liability of Declarant as an Owner shall be limited to its interest in the lots to which it has the right of immediate possession and shall not extend to any other property of Declarant and that Declarant shall in no way be subject to liability for any deficiency judgment. Declarant, or its successors in interest, shall be responsible for the payment of assessments on lots which have not been sold, or which are not under contract of sale, by them to third parties. The term "owner" shall mean, either the holder of the legal fee simple title to a lot who also has the right to possession, or his lessee, or the holder of the equitable fee simple title to a lot who also has the right to possession, or his lessee.

18. Any streets or roadways dedicated as public streets on the tract map for that portion of LEILANI ESTATES referred to above shall be public streets and are not subject to this Declaration. Those streets or roadways which are not so dedicated shall be private streets used as such solely by the Association members, owners of the lots, their guests and invitees, and firemen, policemen and other government personnel in accordance with applicable laws and rules and regulations of the Association so long as such Association or a successor assuming its function as to such street or roadways is in existence.

Each owner shall also have as to each lot of such owner a 1/2241st nonexclusive right to the beneficial use of the easement in Roadway Lots A,B, and C, as shown on the tract map of LEILANI ESTATES to be used in common with others entitled thereto, the interest in the said right in the easement for such use to terminate upon dedication of the fee title to said Roadway Lots to any government authority.

19. EASEMENTS. There are hereby specifically reserved for the benefit for the Association, for the owners in common, and for each lot owner severally, as their respective interests shall appear, the easements, and rights of way, as are particularly identified in this paragraph.

(a). There is reserved for the benefit of each lot, and the lot owner thereof, as dominant tenement:

(1). A nonexclusive easement for utility services at reasonable places over, under and through each lot, as the servient tenement;

(2). As to each owner a nonexclusive right of way easement, and as to the Association, an easement, for egress and ingress over the private streets or roadways as referred to in Paragraph 18 above;

(b). There is reserved to the Association, its agents and servants, in gross, of which all of the lots shall be jointly the servient tenement, an easement of entry and access, including the permanent installation of utility pole anchors, for the installation and maintenance of utility lines, utility meter boxes, landscaping and maintenance of all streets and roads and for the performance generally of its rights and duties as provided in this Declaration and its Charter.

20. COVENANTS RUNNING WITH LAND. The foregoing restrictions shall operate as covenants runnings with the land and the breach of any such covenants or the conditions or the continuance of any such breach may be enjoined, abated or remedied by said Declarant, or by the Community Association, or by any owner, and by their respective successors and assigns, but by no other person; provided, however that any violation or re-entry shall not forfeit or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any lot or any interest therein. Each and all of said restrictions shall be binding upon and enforceable and effective against Declarant, or any other owner including but not limited to any owner whose title to any interest in any lot is acquired through foreclosure or trustee's sale, as well as the successors in interest of any such owner, so long as Declarant or such owner has any interest in such lot. Easements for electricity and telephone are of record.

21. ENFORCEMENT. Jurisdiction may be take in equity at suit of the Association, the Declarant or its successors or assigns, or of any owner to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the Association, Declarant or any owner to be observed and performed, without prejudice to the right of the Association, the Declarant or its successors or assigns or any owner to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

22. SEVERABILITY. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions that shall remain in full force and effect.

23. AMENDMENT. This Declaration of Restrictions (other than Exhibits A and B hereto) may be amended by an instrument in writing, approved, signed and acknowledged, by the owners of at least seventy-five percent (75%) of the lots, which amendments shall be effective upon recordation in the office of the Bureau of Conveyances of the State of Hawaii; provided, however, that this paragraph shall not be amended to allow amendments by the lot owners of less than seventy-five percent (75%) of the lots.

No such amendment shall affect the mortgagee, trustee or beneficiary of any valid, bona fide mortgage or deed of trust given in good faith and for value of any part or portion of the property or interest therein prior to the effective date of such amendment. No such amendment shall have the effect of taking any part or portion of the property or interest therein without either adequately compensating the respective owner of the lot to which such part, portion, or interest pertains (this excludes the Association to the right of compensation) unless the taking affects each lot substantially equally.

24. ANNEXATION OF ADDITIONAL PROPERTIES.

(a). Additional property may be annexed by an instrument in writing approved, signed, and acknowledged by the lot owners of at least seventy-five percent (75%) of the lots, and the annexation shall be effective upon the recordation of such instrument in the office of the Bureau of Conveyances of the State of Hawaii.

(b). Notwithstanding the foregoing, if within three (3) years of the date of incorporation of the Association, Leilani Development should develop additional lands adjacent to or proximate within a one mile radius of the perimeter of the property herein, such additional lands may be annexed to the property without the assent of the lot owners; provided, however, the development of the additional lands is a reasonable continuation of the general plan of LEILANI ESTATES.

Dated on March 14, 1969, in Honolulu, Hawaii, By First Hawaiian Bank.

FIRST HAWAIIAN BANK
By (s) CHAS. F. MARSLAND, JR.
Trust Officer

By (s) CARL L. FINSETH
Trust Officer

The First Beneficiary under that certain Trust, Agreement dated December 6, 1968 and presently unrecorded, the PUNA SUGAR COMPANY, LIMITED, hereby approves the execution and recordation of this Declaration of Covenants, Conditions and Restrictions.

Dated on March 14, 1969, in Honolulu, Hawaii, by Puna Sugar Company, Limited.

PUNA SUGAR COMPANY, LIMITED

By (s) KARL H. BERG
President

By (s) J.E. LOOMIS

Assistant Secretary

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 14th day of March, 1969, before me personally appeared CHAS F. MARSLAND, JR. and CARL L. FINSETH, to me known, who, being by me duly sworn, did say that they are the TRUST OFFICER and TRUST OFFICER, respectively, of FIRST HAWAIIAN BANK, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said CHAS F. MARSLAND, JR and CARL L. FINSETH severally acknowledged said instrument to be the free act and deed of said corporation.

(s) HALL T. TANAKA
Notary Public, first Judicial
Circuit, State of Hawaii

My Commission expires: November 17, 1972.

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 14th day of March, 1969, before me personally appeared KARL H. BERG and J.E. LOOMIS, to me known, who, being by me duly sworn, did say that they are the PRESIDENT and ASSISTANT SECRETARY, respectively, of PUNA SUGAR COMPANY, LIMITED, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said KARL H. BERG and J.E. LOMMIS severally acknowledged said instrument to be the free act and deed of said corporation.

By (s) S.T. VONIER
Notary Public, first Judicial
Circuit, State of Hawaii

My Commission expires: August 31, 1970.